



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

EXTENSION OF CONTRACT FOR CONSULTANT

PLANNING SERVICES

RECOMMENDED ACTION(S):

Authorize the City Manager to Execute a Contract in the amount of \$60,000 for contract planning services. Approval of the contract extension is contingent upon City Council approval of Planning Division's Fiscal Year 2003-04 budget as recommended for contract labor services.

EXECUTIVE SUMMARY:

The proposed budget for FY 2003-2004 again includes funding to continue the services of a contract planner to assist with processing of current development applications. The audit report prepared by MAXIMUS on the City's development processing services recommended the Planning Division continue to contract for this position to help expedite processing of applications for new developments. While the economy has slowed, the number of planning applications that are in process has remained constant with the level of activity of a year ago. Continuation of the contract planner position is therefore needed to maintain current service levels. The contract planner is authorized to work a maximum of 20 hours per week.

On September 18, 2002, the City Council approved a contract with Pacific Municipal Consultants to provide planning services through January 31, 2003. On January 15, 2003, the City Council approved a contract extension through the end of the current fiscal year (June 30, 2003). Staff is recommending the contract with PMC be extended under the current terms for another six months through December 31, 2003.

FISCAL IMPACT:

The Planning Division has budgeted \$60,000 for contract labor under account number 41900 on page 211 of the proposed Fiscal Year 2003-04 budget. It is estimated that extension of the PMC contract through December 31, 2003 will cost \$30,000.

Agenda Item # 1

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

TITLE: AMEND AGREEMENT WITH THE STROMBOTNE LAW FIRM

RECOMMENDED ACTIONS:

Authorize the City Manager to execute an Amendment to Agreement with the Strombotne Law Firm.

EXECUTIVE SUMMARY:

The City contracted with the Strombotne Law Firm to assist the City with its defense in the cross-complaint filed by Ameron International Corporation. A three and one-half week trial in this matter commenced on January 13, 2003, in the Santa Clara County Superior Court. Following trial, the parties filed numerous post-trial motions culminating in a hearing on May 5, 2003. The attached Amendment to Agreement is in the amount of \$165,000. This amount should be sufficient to cover the fees and costs associated with the trial and post-trial motions of this matter. Therefore, staff is recommending that Council approve the attached Amendment to Agreement in the amount of \$165,000.

At the May 5, 2003, hearing, the City was awarded its attorney's fees and costs. The judgment has not yet been finalized. Pending an appeal, it is anticipated that, at some future date, the City will recover a portion, if not all, of its attorney's fees and costs.

FISCAL IMPACT:

It is requested that an appropriation of \$75,000.00 be added to the City Attorney's budget. A portion of this amount will be recovered from enterprise funds in future years through the cost allocation plan.

Agenda Item # 2

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

**TITLE: SECOND AMENDMENT TO AGREEMENT WITH
THE LAW FIRM OF DOWNEY, BRAND, SEYMOUR &
ROHWER, LLP**

RECOMMENDED ACTIONS:

Authorize the City Manager to execute a Second Amendment to Agreement with the law firm of Downey, Brand, Seymour & Rohwer, LLP.

EXECUTIVE SUMMARY:

On October 17, 2001, the Council authorized the City Attorney to retain outside counsel to represent the City in an action challenging the redistricting plan adopted by the State of California. The City Attorney's Office hired the law firm of Downey, Brand, Seymour and Rohwer, LLP, a Sacramento law firm specializing in electoral matters, to represent the City.

On October 31, 2002, the City entered into its second contract with Downey, Brand, Seymour and Rowher, LLP, in the amount of \$20,000. An amendment to this contract was approved by council on January 15, 2003, increasing the contract amount to \$60,000. The current contract is insufficient to cover the fees and expenses associated with the discovery and hearing in this matter. Therefore, staff is recommending that Council approve the attached Second Amendment to Agreement increasing the contract amount to \$135,000. This amount should be sufficient to cover the fees and costs associated with the discovery phase and hearing in this matter.

FISCAL IMPACT:

It is requested that an appropriation of \$75,000.00 be added to the City Attorney's budget.

Agenda Item # 3

Prepared By:

(Title)

Approved By:

(Department Director)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

APPROVAL OF LEASE OF PERCHLORATE REMOVAL PLANT TO BE INSTALLED AT TENNANT WELL SITE

RECOMMENDED ACTION(S):

Authorize the City Manager to execute documents as required with both the Santa Clara Valley Water District and US Filter to provide for the lease of a perchlorate removal plant.

EXECUTIVE SUMMARY:

As Council is aware, our Tennant Well site was closed over a year ago due to perchlorate concentrations above the State Action Level of 4 parts per billion (ppb). We have been in discussions in the last few weeks with the Santa Clara Valley Water District (SCVWD) who has agreed to fund the first year installation and operation costs of a perchlorate removal plant at our Tennant Well site, not only for the purpose of supplying the City with additional water supplies, but also to begin the clean-up of the perchlorate contamination emanating from the Olin site.

The District has negotiated a lease with US Filter to install and operate an ion exchange perchlorate removal plant; however, the permit to operate by State Department of Health Services must be with the City since we operate our water utility system. The District has recently requested the City to enter into an agreement with them whereby they would agree to pay the entire first year costs of the lease and operation of the perchlorate removal plant, but that the City execute the lease with US Filter for the first year operation.

The first year lease costs will be \$255,000 and as stated, all costs would be paid by SCVWD. The second year lease costs, assuming the City then wishes to fund the continued treatment, would be approximately \$73,000 per year. The lease provides that US Filter will supply and operate the perchlorate removal plant, and will guarantee that the perchlorate levels leaving the site will never exceed the 4 ppb State Action Level. The District will recover their costs from Olin corporation, and if the City continues the operation of the plant, we will also seek reimbursement from Olin.

It is recommended that Council give the City Manager authority to execute the required agreements with both the SCVWD and US Filter, subject to review and approval by the City Attorney.

FISCAL IMPACT: Since all first year lease expenses are paid by SCVWD, there is no fiscal impact at this time for this action.

Agenda Item # 4

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

APPROVAL OF PURCHASE ORDER FOR SYSTEMS FURNITURE REORGANIZATION – PUBLIC WORKS OFFICE EXPANSION PROJECT

RECOMMENDED ACTION(S):

Authorize the City Manager to execute a purchase order with Office Products and Interiors (OPI) in the amount of \$67,024.35 for the reorganization of systems furniture and partitions at the Public Works administrative offices.

Agenda Item # 5

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: As a part of the Public Works Administration Expansion project, it is necessary to reorganize the existing systems (partitions and furniture) to accommodate existing staff. We are nearing completion of the construction of the 400 sq. ft. addition as authorized at the Council meeting of February 19, 2003. It is now necessary to purchase the refurbished systems furniture for this expanded area as well as our public reception area in order to comply with ADA requirements. At the same time, we will be completely reorganizing the entire “open” area for more standard “cubicle” sizes as was done at City Hall in early 2001.

OPI prepared an inventory of all system parts and pieces and they will be utilizing as many of those pieces as possible and purchasing refurbished additional pieces only as needed. As we will be completely dismantling the existing cubicle area and installing new carpet, it is necessary for this work to occur over the 4th of July weekend. The proposal from OPI accounts for the additional cost of working during the holiday weekend. Staff is currently working with other subcontractors as necessary to complete this project over the July 4th Holiday to minimize work disruptions.

FISCAL IMPACT: The current total project budget of \$219,000 is funded in the 2002-2003 Capital Improvement Program (CIP) Budget, Project Number 205093-Public Works Office Expansion. No additional funds are required.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

REJECTION OF BIDS FOR CONSTRUCTION OF THE MONTEREY ROAD / UPRR UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT

RECOMMENDED ACTION: Reject the bids received on April 22, 2003 for the Construction of the Monterey Road / UPRR Undercrossing Pedestrian and Bikeway Improvement Project.

Agenda Item # 6

Prepared By:

**Contract Project
Manager**

Approved By:

Public Works Director

Submitted By:

City Manager

EXECUTIVE SUMMARY: The main features of this project is the construction of a new retaining wall and sidewalk on the easterly side of Monterey Road under the UPRR tracks, and includes bike lanes, storm drainage improvements, erosion control, and street lighting.

Two grants have been approved for the City totaling \$400,000. To date \$80,000 has been committed to the project design.

Nine bids were received at the bid opening held on April 22, 2003. The low bid was 31% above the engineering cost estimated at \$400,000. The bids received are listed below:

Monterey Peninsula Engineering	\$523,370
Stevens Creek Quarry	584,209
Granite Construction	618,618
R.L. Davis Construction	619,842
McGuire & Hester	671,964
Jones Brothers	647,169
A.J. Vasconi	669,174
Trinchero Const.	714,582
R.E. Mccollum	723,671

An analysis of the bids reveals that the cost for the construction of the retaining wall, especially the specified surface treatment of the wall, is significantly higher than had been estimated by our consultant design engineer. We will be revising the project plans and specifications with a less expensive surface treatment system and re-bidding the project. We anticipate returning to Council with recommendation to award at our July 15, 2003 council meeting.

FISCAL IMPACT: None



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

ACCEPTANCE OF SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE I 2002-2003 PROJECT

RECOMMENDED ACTION(S):

1. Accept as complete the Sidewalk, Curb & Gutter Removal and Replacement, Phase I 2002-2003 Project in the final amount of \$36,292.
2. Direct the City Clerk to file the attached Notice of Completion with the County Recorder's office.

EXECUTIVE SUMMARY:

The contract for the Sidewalk, Curb & Gutter Removal and Replacement, Phase I 2002-2003 Project was awarded to Monterey Peninsula Engineering, Inc., by the City Council at their December 18, 2002 meeting in the amount of \$34,275. The project resulted in the removal and replacement of 2200 SF of sidewalk, 250 LF of curb and gutter, two driveways, and Asphalt Concrete Patching.

The work has been completed in accordance with the plans and specifications.

FISCAL IMPACT:

This project is budgeted in the 2002-03 Street Maintenance Budget. The allocated project construction cost including a 10% contingency was \$37,703. The contract was awarded in the amount of \$34,275 and the final contract price is \$36,292.

Agenda Item # 7

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager

Record at the request of
and when recorded mail to:

CITY OF MORGAN HILL
CITY CLERK
17555 Peak Avenue
Morgan Hill, CA 95037

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 27383

NOTICE OF COMPLETION
CITY OF MORGAN HILL
Sidewalk, Curb & Gutter Removal and Replacement, Phase I 2002-2003 Project

NOTICE IS HEREBY GIVEN, pursuant to Section 3093 of the Civil Code of the State of California, that the Director of Public Works of the City of Morgan Hill, California, on the 4th day of June, 2003, did file with the City Clerk of said City, the contract for performing work which was heretofore awarded to Monterey Peninsula Engineering, Inc., on December 18, 2002, in accordance with the plans and specifications for said work filed with the City Clerk and approved by the City Council of said City.

That said improvements were substantially completed on April 18, 2003, accepted by the City Council on June 4, 2003, and that the name of the surety on the contractor's bond for labor and materials on said project is The Continental Insurance Company.

That said improvements consisted of the construction and installation of all items of work provided to be done in said contract, all as more particularly described in the plans and specifications therefor approved by the City Council of said City.

Name and address of Owner: City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California

Dated: _____, 2003.

Jim Ashcraft, Director of Public Works

I certify under penalty of perjury that the foregoing is true and correct.

Irma Torrez, City Clerk
City of Morgan Hill, CA
Date:



CITY COUNCIL STAFF REPORT

MEETING DATE: JUNE 4, 2003

AWARD OF CONTRACT FOR SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE II 2002- 2003 PROJECT

RECOMMENDED ACTION:

1. Award contract to Monterey Peninsula Engineering, Inc. for the construction of the Sidewalk, Curb & Gutter Removal and Replacement 2002-2003 Phase II Project in the amount of \$58,000.
2. Authorize expenditure of construction contingency funds not to exceed \$5,800.

EXECUTIVE SUMMARY:

This project provides for the replacement of damaged curb/gutter and sidewalk at various locations throughout the City, as shown in the attached location maps.

The bid opening was held on May 20, 2003 and the bids received are as listed below. The low bidder has worked on various projects with the City of Morgan Hill and we have been satisfied with their work. Staff recommends award of the contract to Monterey Peninsula Engineering, Inc. This project shall begin in June, 2003 and shall be completed by the end of July, 2003.

Monterey Peninsula Engineering, Inc.	\$ 58,000
The Don Chapin Company, Inc.	\$ 79,720

FISCAL IMPACT: The total contract cost for this project is \$63,800 which includes a 10% contingency. Project will be funded through the 02/03 Street Maintenance Budget (Account number 202-42231-6100).

Agenda Item #8

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

COUNTYWIDE AB 939 IMPLEMENTATION FEE AGREEMENT

RECOMMENDED ACTION(S):

Direct Staff to Execute the Agreement with the County

EXECUTIVE SUMMARY: The County has collected an AB 939 Implementation Fee on behalf of all jurisdictions within the County since July 1992. The fee was developed to provide revenues to cities for the development and implementation of AB 939 programs. The fee is currently \$2.80 per ton of waste disposed at a landfill within the County. Of this amount, \$1.30 is allocated to directly fund AB 939 waste diversion programs and \$1.50 is allocated to directly fund household hazardous waste disposal. All revenue collected by the County on the City's behalf is forwarded to the City based upon the amount of waste originating from Morgan Hill. The City uses these funds exclusively for planning, monitoring, and implementing solid waste diversion activities

The current three-year agreement expires on June 30. The County's Technical Advisory Committee for solid waste issues evaluated the current level of the fee and recommended increasing the fee by \$.55 per ton in order to maintain the intended level of waste reduction and household hazardous waste management services. Staff recommends that the City Manager be authorized to execute the attached Countywide AB 939 fee agreement.

FISCAL IMPACT: The revenue from the Countywide fee is included in the revenue projections in the proposed City budget for Fund 232.

Agenda Item # 9

Prepared By:

Assistant to the City Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

Agenda Item # 10

Prepared By:

**Council Services &
Records Manager/
City Clerk**

Submitted By:

City Manager

RESOLUTION AMENDING CITY'S CONFLICT OF INTEREST CODE REPORTING CATEGORIES

RECOMMENDED ACTION(S):

1. Adopt Resolution amending the list of positions subject to the City's Conflict of Interest Code

EXECUTIVE SUMMARY:

The Political Reform Act, Government Code Section 87100 and following, requires the City to designate those positions in city government which are required to file Disclosure Statements, which detail the economic interests which could constitute conflicts of interests. The Political Reform Act further requires the City to periodically update its list as positions and/or circumstances change.

City staff has reviewed the list of positions and recommends the following update to comport with the current employee classifications:

1. Senior Project Manager/Community Buildings

FISCAL IMPACT: No budget adjustment is required.

RESOLUTION NO. 5671

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL
AMENDING RESOLUTION NO. 5472 PERTAINING TO THE CITY'S CONFLICT
OF INTEREST CODE BY AMENDING APPENDIX A (DESIGNATED POSITIONS)
TO REFLECT CURRENT CITY POSITIONS AND DISCLOSURE CATEGORIES**

WHEREAS, pursuant to Government Code 87300, Resolution No. 1827 was adopted on September 21, 1983, and subsequently amended by Resolution Nos. 4026 on January 21, 1987; 4152 on February 3, 1988; 4354 on March 7, 1990; 4445 on March 20, 1991; 4529 on December 11, 1991; and 4548 on April 1, 1992; 4660 on March 3, 1993; 4822 on September 7, 1994; 5377 on April 26, 2000; 5463 on March 28, 2001; 5472 on May 2, 2001; and 5634 on February 5, 2003; and

WHEREAS, the Political Reform Act requires every local government agency to review its Conflict of Interest Code biennially or as deemed appropriate; and,

WHEREAS, a review has been conducted and a determination has been reached that certain amendments are required to update the Code and maintain its accuracy, specifically the addition of the Senior Project Manager/Community Buildings position; and,

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF MORGAN HILL further amends Resolution No. 1827 by deleting the existing Appendix A and replacing it with a revised Appendix A, a copy of which is attached and incorporated by this reference as though fully set forth herein.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th day of June, 2003 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

☞ CERTIFICATION ☞

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5671 adopted by the City Council at a Regular Meeting held on June 4, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

APPENDIX A

Specified below is the following information:

- A. Each designated position in the local agency required to fill Disclosure Statements.**
- B. Category 1 is defined as:**
A designated employee must report all interests in real property having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.
- C. Category 2 is defined as:**
A designated employee in this category must report all investments having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.
- D. Category 3 is defined as:**
A designated employee in this category must report income and business entities in which he or she is a director, officer, partner, trustee, employee or holds any position of management having a direct or indirect relationship to, and which may foreseeably be affected by, the official duties and responsibilities of each such designated position.

Persons Subject To The Conflict of Interest Code	Disclosure Category
Council Services & Records Manager/City Clerk	1,2,3
Chief of Police	1,2,3
Police Lieutenant	1,2,3
City Attorney	1,2,3
Deputy City Attorney	1,2,3
City Manager	1,2,3
Assistant to the City Manager	1,2,3
Director of Business Assistance and Housing Services	1,2,3
Business Assistance and Housing Services Manager	1,2,3
Business Assistance & Housing Analyst	1,2,3
Housing Rehabilitation Coordinator	1,2,3
<u>Senior Project Manager/Community Buildings</u>	1,2,3
Director of Community Development	1,2,3
Chief Building Official	1,2,3
Building Inspectors	1,2,3
Code Enforcement Officer	1,2,3
Environmental Programs Manager	1,2,3
Facilities Maintenance Coordinator	1,2,3
Planning Manager	1,2,3
Senior Planner	1,2,3
Associate Planner	1,2,3
Finance Director	1,2,3
Assistant Director of Finance	1,2,3
Budget Manager	1,2,3
Director of Public Works/City Engineer	1,2,3
Deputy Public Works Director/Operations	1,2,3
Deputy Public Works Director/Engineering	1,2,3
Senior Engineer	1,2,3
Associate Engineer	1,2,3
Human Resources Manager	1,2,3
Human Resources Supervisor	1,2,3
Recreation Manager	1,2,3
Recreation Supervisor	1,2,3
Events Coordinator	1,2,3
Architectural and Site Review Board	1,2,3
Corporation Yard Commission	1,2,3
Library Commissioners	1,2,3
Parks and Recreation Commissioners	1,2,3
Planning Commissioners	1,2,3
Rent Stabilization Commissioners	1,2,3
Consultants*	1,2,3

***Consultants shall be included in the list of designated employees and shall disclose pursuant to Category 1, 2, and 3 subject to the following limitation:**

The City Manager may determine in writing that a particular consultant, although a "designated position" is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Exhibit 1

**CONFLICT OF INTEREST CODE FOR
THE CITY OF MORGAN HILL**

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, Section 18730, which contains the terms of a standard Conflict of Interest Code which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of Title 2, California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference. These terms, along with the attached Appendix which designates officials and employees subject to the code and disclosure categories, constitute the Conflict of Interest Code of the City of Morgan Hill.

Pursuant to Section 4(A) of the standard Code, designated employees shall file statements of economic interests with the agency. Upon receipt of the statements of the designated employees, the members of the City Council, the City Manager, the City Attorney; the City Treasurer and the Planning Commission; City Clerk of the City of Morgan Hill shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1620, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A DEVELOPMENT PLAN AND DEVELOPMENT GUIDELINES FOR A 3 LOT COMMERCIAL DEVELOPMENT ON A 3.88-ACRE PLANNED UNIT DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE BETWEEN CONDIT ROAD AND MURPHY AVENUE (APNS 728-17-16, 17 & 23)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1620, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On May 21, 2003, the City Council Introduced Ordinance No. 1620, New Series by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, NOES: None; ABSTAIN: None; ABSENT: Tate.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1620, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A DEVELOPMENT PLAN AND DEVELOPMENT GUIDELINES FOR A 3 LOT COMMERCIAL DEVELOPMENT ON A 3.88-ACRE PLANNED UNIT DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE BETWEEN CONDIT ROAD AND MURPHY AVENUE (APNS 728-17-16, 17 & 23)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3. INCORPORATING THE DEVELOPMENT PLAN BY REFERENCE.**
There hereby is attached hereto and made a part of this ordinance, a Development Plan entitled “Exhibit A - East Dunne Ave. PUD,” which provides development guidelines for the PUD.
- SECTION 4.** This ordinance amends “Area 3-Allowable Uses” as contained in Ordinance 1488, to allow for a maximum of 5 fast food restaurants as conditional uses. All other provisions within Ordinance 1488 shall apply and are not replaced by this ordinance.
- SECTION 5.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 6.** The City Council finds that the proposed PUD Overlay District is consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.
- SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 21st Day of May 2003, and was finally adopted at a regular meeting of said Council on the 4th Day of June 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1620, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 4th Day of June, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

**Ordinance No. 1620, New Series
EXHIBIT A**

East Dunne Avenue PUD

Morgan Hill

A Planned Unit Development Objectives and Planning Guidelines

Prepared by

DpC

Development Process Consultants

DANVILLE

SAN FRANCISCO

MORGAN HILL

DpC
DEVELOPMENT PROCESS CONSULTANTS

East Dunne Avenue PUD

Morgan Hill

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Section One: PUD Description and Planning Objectives

East Dunne Avenue serves as one of the three major freeway entrance points into Morgan Hill. The area of land extending along the north side of East Dunne Avenue between Condit Road and Murphy Avenue is the proposed *East Dunne Avenue PUD*. *East Dunne Avenue PUD* is designed to coordinate with existing development within the boundaries of the proposed PUD to create an attractive and inviting entrance at East Dunne Avenue.

The 3.8 acre (approximate) *East Dunne Avenue PUD* consists of a total of 3 existing parcels : Apn# 728-17-16, 728-17-17 and 728-17-23. All are zoned highway commercial and are within the city limits of Morgan Hill. Two of the parcels at the west end have developed to date. One of the properties retains a fast-food restaurant and the other a strip commercial building. To the south of the site across East Dunne Avenue is a vacant site zoned for commercial use. To the east across Murphy Avenue is a City of Morgan Hill Park. Two Fast Food Restaurants, a Service Station and Hotel exist to the west across Condit Road.

The intersection of East Dunne Avenue and Condit Road is signalized. Murphy Avenue will be signalized as well. No median break is proposed along the Dunne Avenue frontage to provide eastbound traffic ingress into the *East Dunne Avenue PUD* between the two intersections.

In the conceptual design of the total site we have strived to achieve the following objectives:

- Create a high quality development that will provide an elegant entry into Morgan Hill at East Dunne Avenue.
- Provide for harmonious architecture and landscape of the total site.
- Coordinate existing and proposed circulation and parking elements.
- Provide for a continuity of signage.

The intent of the PUD is to accomplish the following objectives:

1. Coordination of aesthetics:

Will provide a harmonious theme to the architecture within the PUD. Two structures exist within the proposed PUD area. The current style of the fast food building (Taco Bell) is Mediterranean style Architecture. The Strip Commercial building retains contemporary architecture that has a postmodern flavor. The

East Dunne Avenue PUD will include new development that employs an architectural style and landscaping that is compatible with Mediterranean influenced architecture when fully developed.

2. Coordination and Maintenance:

Onsite circulation is conceptually determined via the PUD site plan. This will allow for a single curb cut along East Dunne Avenue by providing a shared ingress/egress near the center of the Dunne Avenue Frontage. Interior circulation will extend throughout the PUD sites to provide access to Condit Road and Murphy Avenue. Existing and future development will coordinate to provide the needed circulation per the PUD guidelines. In addition to the circulation and parking elements, Signage and landscaping will be coordinated as well as guidelines for long-term maintenance of these features. The PUD will provide for the continual and ongoing maintenance of all signage, lighting, landscaping and parking. Prior to the issuance of a building permit for any parcel within the Condit PUD, the owner shall provide a letter to the City of Morgan Hill Planning Director stating the owner is willing to enter into a reciprocal access, parking and maintenance agreement with the adjacent owner(s).

3. Coordination of Uses:

Because of the location of the site and the multiple parcels that exist within the PUD area, the site is excellent for a variety of uses. The conceptual site plan is intended to provide a blend of uses and the formation of the PUD is intended to monitor the functional and harmonious integration of development.

Uses allowed within the PUD shall be as follows:

Permitted

Retail stores, excluding convenience markets
Offices
Restaurants, sit-down
Personal services

Conditional

Nursery schools and daycare centers
Animal care facilities
Restaurant, sit down
No more than **five** fast-food restaurants; *maximum of two fast food restaurants on parcel number 728-17-017, maximum of two fast food restaurants on parcel number 728-17-23 and only one drive-thru fast*

food restaurant on parcel number 728-17-016. No drive-thru restaurants are allowed on parcels 728-17-17 & 23.

Any other use which the Planning commission determines to be similar to permitted or conditional uses.

Inclusion of more than one of any kind of these permitted or conditional uses in the PUD shall be allowed only upon granting of a conditional use permit finding that the additional use 1) will not result in an over-concentration of that type of use in the *Dunne Ave., Murphy Ave., and Condit Rd.* area and 2) will not preclude the establishment of other needed uses in the area.

Conditional

Nursery schools and daycare centers

Animal care facilities

Restaurant, sit down

No more than five fast-food restaurants; maximum of two on parcel number 728-17-016, maximum of two on parcel number 728-17-23, and only one freestanding on parcel number 728-17-017. [See City of Morgan Hill Ordinance No. 1488]

Any other use, which the Planning commission determines to be similar to permitted or conditional uses.

Inclusion of more than one of any kind of these permitted or conditional uses in the PUD shall be allowed only upon granting of a conditional use permit finding that the additional use 1) will not result in an over-concentration of that type of use in the area and 2) will not preclude the establishment of other needed uses in the area.

Inclusion of any of these conditional uses in the PUD shall be allowed only upon granting of a conditional use permit finding that the use will be consistent with the gateway and scenic corridor qualities of this PUD area. This finding shall include consideration of the quality of the proposed physical improvements to the site, the extent of outdoor activity on the site that will be visible from public rights of way and the manner in which the use is conducted on the site.

Section Two: Architectural Elements and Style

The visibility and location of this site requires that the aesthetics be of the utmost concern. The *East Dunne Avenue PUD* will incorporate Architecture with a Mediterranean character as represented through the use of the following:

Architectural Detailing:

The PUD retains two existing buildings at this time. The buildings have been built within the last 10 years and are contemporary structures in excellent condition. The existing fast food structure retains a Mediterranean influence in the architecture. The existing building to the northwest location of the PUD has Post Modern style architecture.

Any future development or remodel of existing structures within the PUD will be required to conform to the PUD guidelines. Future detailing will include arched entries, textured stucco appearance and the introduction of cast stone and slump block to the PUD. These same building elements will be used in the signage and landscape furniture.

Roof and Eaves:

All of the existing buildings within the PUD have a tile type roof where visible. The variations that exist are S-tile, Flat or barrel. These types will be reflected on the elevations fronting the public streets throughout the PUD to provide variety yet consistency in the architecture. Acceptable colors will be terra cottas, or blended earth tones such as grays and burgundy's. Rooflines will vary in height and will incorporate a minimum of two varying roof types (i.e., hip, gable). No flat rooflines shall dominate the building elevations along Condit Road, Murphy Avenue or East Dunne Avenue.

Lighting:

Lighting attached to the buildings will augment the architecture and add another element of interest. Lighting along entry walkways, patios or featured landscape areas will conform to the architectural theme. All theme lighting will be in the patina palette or a dark bronze. Landscaping up lighting will be used.

Section Three: PUD Guidelines

Architecture/Site Planning:

The general aesthetic character within the PUD will be of a harmonious architectural theme. The utilization of predominant features such as gabled or hipped roofs, arches, and columns, extended eaves with decorative exposed rafters or brackets, portico entries and decorative moldings will be included on *all* buildings within the PUD. Materials including tile roofs, cement plaster, cast stone elements. This will include the following:

1. Building Massing
 - a. Each building shall provide massing elements with hipped and/or gabled tile roofs on all street and freeway frontages. These elements will result in roofs of varying height and will include hipped or gabled towers, mansard roofs, full gable or hipped roofs over building massing elements. Roof elements to be integrated into the architecture and massing, and shall be extended around building corners to be expressed on the non-frontage building elevations.
 - b. Parapet walls will have a decorative molding at least 12" high x 4" wide at the top of the walls less than 18' in height and at least 18" high x 6" wide at the top of the walls over 18' in height. See **Exhibit A-1**
 - c. Primary building entries shall all be covered by a portico, canopy with columns or "porte-cochere". Sheltering element at building entries must have a supporting component that meets the ground. Secondary doors (such as doors added specifically to meet for fire exiting, electrical/mechanical closets, etc.) shall be covered by a minimum of 12". In the case of secondary doors only, awnings are also acceptable.
 - d. Building must incorporate 3 of the following design elements at street frontages. See **Exhibit A-2**
 1. Arches at canopies and windows, doors
 2. Colonnades or architectural columns supporting canopies with tiled roofs
 3. Window recesses greater than 12" from wall plane
 4. Portico or "porte-cochere" entrances.
 5. Decorative metal or wrought iron railings that will complement the design of the buildings.
 6. Eaves with flat soffit and decorative brackets or exposed rafters with a 3 ½" min width and a shaped end pattern.
2. Building Details (Exterior only)
 - a. Walls shall have a cement plaster finish. All outside corners shall have a continuous ½"-1" radius (this does not necessarily apply to trim elements which can have sharp edges). Texture shall be one of the following:

1. Cement Plaster- smooth finish or sand float. Integral color plaster is encouraged but not required.
 2. Slump stone concrete block.
- b. Trim shall be expressed with concrete, cement plaster, heavy timber wood (min. 4 x each way), terra cotta, cement plaster finish over fiberglass reinforced foam and/or cut or cast stone molding elements, or a combination of thereof. Plastic, fiberglass or metal are not acceptable materials (except in the case of flashing specifically for weatherproofing (e.g. continuous G.S.M. parapet cap with a 2' exposed vertical lip)). See **Exhibit A-3**
- c. Architectural columns will have detailed bases and capitals expressed with concrete, cement plaster and/or cut or cast stone molding elements. Architectural columns shall be exposed concrete, cut or cast stone, or a combination of thereof. Plastic, fiberglass, foam or wood is not acceptable material. See **Exhibit A-4**
- d. Roof eaves will have a decorative gutter with either a half-round. Downspouts on building frontages may be concealed in building walls. If there are any exposed downspouts on any elevations they will be treated decoratively with round downspouts, decorative leaders and decorative straps. See **Exhibit A-5**
- e. Roof overhangs will include either eaves with paneled flat soffit and decorative brackets or exposed rafters with a 3 ½" min width and a shaped end pattern. Underside of any exposed roof sheathing will be rough-sawn tongue and groove. Rough sawn plywood is not acceptable. Attic/soffit vents in eaves will not be exposed holes in blocking between rafters. Attic/soffit vents shall be one of the following:
 1. Continuous 2" soffit vents.
 2. Prefabricated G.S.M. mansard vents. These seen from any street level, nor shall they daylight above any parapet/ridge line/etc.
- f. Heavy timber outriggers, exposed beams, etc. if applicable shall have minimum dimension of 6" wide by 14" high. Exposed rafter tails shall have a minimum dimension of 4" wide by 6" high
- g. Doors and windows shall be recessed (2" min.) prefabricated window assembly with a traditional stile (Andersen or Pella are acceptable brands). Primary entry doors shall have at least 50% glazing. "Storefront" window/door assemblies are only acceptable if they satisfy one of the following:
 1. Window/door assemblies shall be recessed at least 8" from the wall and not extend continuously more than 16' measured horizontally. At least 2' of solid wall and/or architectural treatment shall separate window/door assemblies executed in this manner.

2. Running (continuous) "storefront" assemblies (beyond 16') are allowed only if they are completely covered and setback at least 6' from the face of either an architectural element (such as a tower element) or a running colonnade. Awnings may be added, but do not count towards the 6' criteria. Columns in colonnades may not be more than 18' apart (O.C.). Column legs for architectural elements shall not have openings of more than 16' measured horizontally. Architectural glazing divisions are encouraged. Continuous ground (finish floor) to head glazing is not acceptable and shall include at least one continuous division at 24" to 36" above finish floor (i.e. a continuous "chair rail").
 3. Door or windows that are only recessed 12" or less shall be highlighted by the use of accent trim (e.g., molding, pop-out or wood trim). The design will be complimentary to the architectural theme of the building. See **Exhibit A-6**.
 4. Reflective glazing and/or spandrel glazing shall not be used. Green or Blue tinted glazing shall not be used.
- h. Balcony/Stair assemblies shall either be cement plaster with trim, true wrought iron or a combination of cement plaster, concrete elements, wrought iron and/or clay pavers. Guardrails/handrails shall have a shaped traditional profile with decorative brackets. Under no circumstance will a tube steel or steel pipe assembly is acceptable for guardrail/handrail assemblies.
 - i. Decorative metal works for signage, information kiosk, lighting, etc. are encouraged. Wrought iron is acceptable for these purposes, but may be mixed with other metals (such as bronze, copper, etc.) for decorative effect. Also, mixed assemblies of wrought iron with cut sheet metal, metal meshes, etc. for decorative effect is acceptable. In such cases, the wrought iron shall still be at least 50% of the assembly. Wrought iron shall be finished either with traditional methods, anodized (if bronze or copper, patina may be applied) or painted black.
 - j. Roof materials at visible roofs shall be clay barrel shaped roof tiles (2 piece) or clay barrel shaped w/flat roof tiles (2-piece). Colors shall be blends of earth tone colors. Glazed tile will be satin finish.
 - k. Building Colors will be from the approved color palette. Building under 12,000 square feet will have a maximum of 2 body or field colors and 2 trim colors. Building over 12,000 square feet will have a maximum of 3 body or field colors and 2 trim colors.

- l. Structures will incorporate breaks in horizontal and vertical planes by stepping or staggering setbacks, protruding or recessed covered entries and recessing windows to provide substance and scale. Vertical heights greater than 25' and horizontal lengths greater than 30' shall be interrupted by a plane shift or architectural design element that may include decorative moldings, change of materials (i.e. stone or exposed pigmented concrete), columns, pilasters or arbor work.
 - m. All exterior wall elevations will have architectural treatment. No building surface will have a flat void surface of more than 20' in length measured horizontally without architectural treatment.
 - n. Gutter and down spouts shall be located to the wall where facing a street frontage. All gutters and down spouts that cannot be located to the wall will blend into façade to which it is attached, unless used as a design element, in which case will be consistent with the color scheme of the building.
3. No franchise architecture is permitted.
4. All buildings will provide public access.
5. Mechanical equipment will not be visible on the exterior wall surface of a building.
6. Roof mounted mechanical, ducting, utility equipment and similar equipment/assemblies shall not daylight above any portion of the lowest roofline or parapet wall and out of public view. Acceptable screening is shown in **Exhibit A-7**.
7. All outdoor storage of goods, materials or equipment will be visually screened up to 8 feet in vertical height. The screening will be designed as an integral part of the building design and shall be constructed with materials consistent with the buildings on the site. Chain link fencing of any type is not an acceptable manner of screening.
8. Fire sprinkler risers shall be located within buildings unless otherwise required by the Fire Department.
9. Electrical switchgear, panels, etc. shall be located within the building. Prefabricated electrical sheds are not acceptable.
10. All roof/attic access ladders shall be located inside the building. Access panels, doors, ladders shall not daylight above any portion of the lowest roofline or parapet wall and out of public view.
11. Pad mounted transformers will be screened with landscaping.
12. Back flow preventors, post indicator valves and all similar devices will be located underground or to the rear of the site and screened with landscaping.

13. All fire sprinkler risers shall be fully inside each building. Method, device and/or assembly for monitoring purposes shall be determined and approved by the Building & Fire Departments.
14. Fire alarms shall be in a location as approved by the architect. Prior to installation, the Fire Protection contractor shall submit plans to the architect for written approval.
15. Trash enclosures will be constructed of 8" minimum solid grouted masonry material, with exterior finish and detail consistent with the buildings on-site and will be a minimum 6 feet in height, with solid view obstructing gates. Interior of enclosures shall be painted to match exterior. Covered trash enclosures shall have exposed rafters with decorative shaped rafter tail design. Trash enclosures shall be located in inconspicuous locations and screened with landscaping. Acceptable Trash enclosures are shown in **Exhibit A-8**.
16. Fences, if applicable, will be wrought iron, bronze or similar forged metal. If used with masonry columns, the spacing of the masonry columns shall be 20' O.C. max. They may be combined with solid walls, trim elements, etc. Fences to be painted black. Anodized or cured (close to black). Masonry column finish, color and detailing to match the building. See **Exhibit A-9**.
17. Approved address numbers will be placed on all new and existing buildings as to be plainly visible and legible from the street. Address letters to be 8" high. Placed over the entry doors unless required by the approving agencies to be placed elsewhere. Address will also be placed upon the monument signs. The size and locations of addresses shall be approved by the fire department.
18. Provisions for connecting driveways and walkways with adjacent property owners will be provided with each design. Pedestrian connections between the street sidewalks as well as between buildings will be a decorative paving. This is to be one of the following:
 1. Interlocking pavers.
 2. Stamped concrete with integral color or stained finish.
 3. Scored concrete with integral color or stained finish.
 4. Saw cut concrete with integral color or stained finish.
19. Parking lots are to be designed to include curb planters around landscaping.
20. Uses within the PUD that utilize shopping carts will provide indoor storage of the carts and will provide for the collection areas throughout the parking lot within 75' of the primary building entrance and centrally located throughout the parking field.
21. Vending machines, rides, newspaper racks or any coin-operated devices are not to be placed on the exterior of any buildings in the PUD.
22. Articulation must be provided on all sides of the buildings.

23. All plans to be subject to approval by the City of Morgan Hill's Architectural Review Board and by the City of Morgan Hill.

Landscaping

Design criteria for landscaping shall be consistent throughout the PUD. Each development within the PUD shall follow the requirements contained herein when preparing their landscape plans. The general characteristics of the plant palette for the PUD shall provide a combination of year round color and textural interest. The Theme Plant List Palette is provided as a basis for plant selection for all site design. There are specific plant selection criteria for the street frontages within these guidelines. Plant selection for the building site area (within the frontages) there will be discretion for use of additional under-story plants not provided within the theme list. All site trees must, however, be selected from the PUD theme list provided. Palms will be restricted to potted accents. *Cycus revoluta* (Sago Palm) may be used as an under-story plant on building site area.

24. PUD Theme Plant List Palette

- a. Large Canopy Deciduous Trees
 - *Fraxinus oxycarpa* "Raywoodii" (Raywood Ash)
 - *Pistacia chinensis* (Chinese Pistache) *
 - *Platanus acerifolia* (London Planetree) *
 - *Pyrus calleryana* "Aristocrat" (Aristocrat Pear)
 - *Quercus lobata* (Valley Oak)
 - *Quercus palustris* (Pin Oak)
- b. Broadleaf Evergreen Trees
 - *Geijera parviflora* (Australian Willow)
 - *Nerium oleander* (Standard)
 - *Quercus agrifolia* (Live Oak) *
 - *Quercus ilex* (Holly Oak)
 - *Ulmus parvifolius* (Chinese Elm)
- c. Coniferous Trees
 - *Cedrus deodara* (Deodar Cedar)
 - *Pinus pinea* (Italian Stone Pine)
 - *Sequoia sempervirens* "Aptos Blue" (Coast Redwood)
- d. Accent Trees
 - *Cupressus sempervirens* (Italian Cypress)
 - *Lagerstroemia species* (Crape Myrtle) *

- *Prunus cersifera* "Krauter Vesuvius" (Purple-Leaf Plum)
- *Prunus serrulat* (Flowering Cherry)
- *Lagerstroemia* f. "Tuscarora" (Rose Crape Myrtle)
- *Pistacia chinensis* (Chinese Pistache)
- *Platanus* a. "Yarwood" (Yarwood Plane Tree)
- *Pyrus calleryana* "Bradford"
- *Sygrus romanzoffianum* "Queen Palm" (pot)
- *Photinia fraseri* (Standard)

e. Large Shrubs

- *Ceanothus* species (Wild Lilac)
- *Eleagnus pungens* (Silverberry)
- *Escallonia* species (Escallonia) *
- *Heteromeles arbutifolia* (Toyon)
- *Ligustrum japonicum* (Wax-Leaf Privet) *
- *Nerium oleander* (Oleander)
- *Photinia fraseri* (Photinia) *
- *Pittosporum* species (Mock Orange)
- *Prunus caroliniana* (Carolina Laurel Cherry)
- *Viburnum tinus* "Spring Bouquet" (Laurustinus)
- *Xylosma congestum* (Shiny Xylosma) *

f. Shrubs

- *Abelia* species (Abelia)
- *Arctostaphylos* species (Manzanita)
- *Buxus japonica* micro "Green Beauty" (Japanese Boxwood)
- *Ceanothus* species (Wild Lilac)
- *Cistus* species (Rockrose)
- *Escallonia* species (Escallonia)
- *Leprospermum* "Gaiety Girl" (New Zealand Tea Tree)
- *Grevilea* "noellii" (Grevillea)
- *Nandina domestica* "Compacta" (Compact Nandina)
- *Pittosporum* species (Mock Orange)
- *Raphiolepis* species (India Hawthorn)
- *Rosa Meidiland* (Meidiland Bush Rose)
- *Rosmarinus* "Tuscan Blue" (Tuscan Rosemary)
- *Dietes bicolor* (Yellow fortnight Lily)
- *Escallonia* "Terri" (Escallonia)
- *Euryops* p. *Viridis*" Green Euryops
- *Ligustrum* j. "Texanum" Texas Privet

- Nandina "compacta" Heavenly Bamboo
- Pennisetum Rubrum "Fountain Grass"
- Phormium tenax New Zealand Flax
- Photinia fraseri "Photinia"
- Podocarpus m. "Maki" Shrubby Yew Pine
- Strlizia reginae Bird of Paradise
- Xylosma c. "Compacta" Shiny Xylosma

g. Accent Shrubs / Perennials

- Agapanthus africanus (Lily-of-the-Nile) *
- Camelia species (Camelia) *
- Dietes species (Fortnight Lily) *
- Euryops pectinatus (Euryops) *
- Hemerocallis species (Daylily) *
- Lavandula augustifolia (English Lavender) *
- Phormium tenax (New Zealand Flax) *
- Tulbaghia violacea (Society Garlic) *

h. Vines & Espaliers

- Ficus pumila (Creeping Evergreen Fig)
- Gelsemium sempervirens (Carolina Jessamine)
- Hardenbergia violacea (Hardenbergia)
- Parthenocissus tricuspidata (Boston Ivy)
- Solanum Jaminoides (Potato Vine)
- Pyrus kawkami (Espalier Evergreen Pear)
- Podocarpus gracilior (Espalier Fern Pine)

i. Ground Cover

- Arctostaphylos "Point Reyes" (Manzanita @ 36" o.c. spacing) *
- Cotoneaster "Lowfast" (Lowfast Cotoneaster @ 42" o.c. spacing)
- Juniperus sabina "Broadmoor" (Broadmoor Juniper @ 36" o.c. spacing) *
- Rosmarinus "Huntington Blue" (Prostrate Rosemary @ 36" o.c. spacing) *
- Vinca minor (Dwarf Periwinkle @ 24" o.c. spacing) *
- Armeria Maritime Pink Common Thrift
- Heuchera sanguinea Coral Bells
- Iberis sempervirens Candy Tuft
- Lantana montevidensis Purple trailing lantana
- Grass Lawn Dwarf Tall Fescue

- Myoporum parvifolium Myoporum
- Trachelospermum jasminoides Star Jasmine
- Ribes viburnifolium Evergreen Currant
- Parthenocissus tricuspidata Boston Ivy

- j. Turf Lawn
All turf areas shall be Dwarf-Tall Fescue-blend sod roots.

Symbols: * Tree qualifies as a street frontage Tree.

25. A minimum of 30-foot wide landscape area (excluding any planting in the right-of-way) shall be provided adjacent to the Condit Road, E. Dunne Avenue and Murphy Avenue frontages

26. Minimum Tree Requirements

- a. Road Frontages: Trees shall be installed within 30-foot wide frontage along the public streets at an average ratio of one (24" size) tree per 30 lineal feet, with no spacing exceeding 60 feet. Tree compositions shall be in informal massing, not arranged in linear patterns at repeated intervals. Any tree installed in addition to the requirements may be a minimum of 15-gallon size. Tree selection shall consist of equal ratios of deciduous and broadleaf evergreen trees. Refer to Theme Plant List for species selection.
- b. Building Site Area: Trees shall be installed at a minimum of one tree per (5) parking stalls selected from the Large Canopy Tree or Broadleaf Evergreen Tree list to maximize shade value. Trees provided within all the road frontages apply towards this total quantity. In adjacent parcels, selected from the Broadleaf Evergreen Tree list. All trees installed on building site shall be 15-gallon minimum. With the exception of accent trees, a minimum ten percent of trees installed in each parcel within the PUD will be Live Oak (*Quercus agrifolia*).

27. Shrubs Requirements. All large and medium-size category shrubs shall be a minimum of 5-gallon size. All accent shrubs; ground cover and perennials shall be a minimum of one-gallon size. Annual color beds are allowed for accent locations. Vines and espaliers shall be a minimum of 5 gallon, with exception to Creeping Fig and Boston Ivy, which may be one-gallon size. Large shrubs and vines shall be incorporated to screen trash enclosures and transformers.

28. Trees will be planted in a grouping or clustering pattern. Trees within the open space areas will be located and planted with a “ staggered” appearance to avoid a linear or row look.
29. Landscaping, a minimum of 5 feet in width will be placed adjacent to a minimum of 50% of the building's perimeter.
30. Landscape material shall be used to highlight building entries and pedestrian paths to create a focal point and divert persons to the building entrance.
31. Provide a planting scheme that is in harmonious transition with the existing adjacent landscapes as they occur. Complimentary tree species and ground plane treatment shall flow from parcel to parcel to reinforce the dissolve of property edges along the frontages.
32. Street Frontage shall have not more than 75% turf cover, with the balance of ground plane being shrub and ground cover area. Ground cover shall be planted in all “non-turf” planting areas within the 30-foot wide frontage planting area. Refer to plant palette for spacing.
33. Planting along the street frontages shall not exceed 30 inches in height within sight lines of driveway access. Any frontage mounding and /or screen planting shall recede to meet the sight line requirement.
34. All landscape areas provided (with the exception of areas adjacent to public streets) shall have the following minimum widths.
 - a. The north property line planters will have a minimum width of 10 feet. Interior property line where landscaping is provided will have a minimum width of 5'. Combined with the adjacent development the 5-foot width will result in an overall minimum of 10-foot perimeter landscape area.
 - b. Interior landscape planters shall be provided between contiguous parking stalls at a maximum ratio of one planter per 10 stalls. These planters shall be 10 feet minimum in width and include a 1-foot wide strip of concrete adjacent to the curb on each side of the planter. This will result in a net landscape area width of 7 feet.

- c. Planters at the end of the parking rows shall be 7 feet minimum in width and include a 1-foot wide strip of concrete adjacent to the curb of the automobile side of the planter. This will result in a net landscape area of 5 feet.
- 35. Landscaping along the street frontages is to achieve an undulating 2 feet to 3 feet high screening effect. This may be achieved by a combination of mounding and planting resulting in the undulating screening height.
- 36. All landscaping areas adjacent to parking and drive isles shall have a 6-inch minimum high curb.
- 37. An automatic sprinkler system shall be installed for all landscaped areas. Low flow irrigation systems are encouraged. Water conservation techniques shall be incorporated into all landscape plans. Drought resistant and water conserving plants shall be considered.
- 38. Landscaping to be installed at building entrances will be box size and /or accent trees with a minimum height of ten feet and a crown width of four feet.
- 39. Any improvements made to existing landscaping within the PUD will be required to conform to the PUD landscape guidelines.
- 40. The City of Morgan Hill Community Development Department will not permit any tree removal, trimming or any significant landscape alterations within the PUD without prior approval.

Lighting:

- 41. Site lighting at street frontage (within 30') will match the decorative acorn style fixture and pole. These fixtures will extend along the pedestrian connection between the street sidewalk and the building entry as well as along pedestrian connections to adjacent buildings.
- 42. General parking lot lighting will be consistent throughout the PUD and will be high-pressure sodium. The maximum height of the lighting will be 20 feet. Lighting within 100 feet of residential zoned property will be limited to a 15' height. Color of fixture and pole to be dark bronze or black.
- 43. No roof mounted lighting or floodlights will be placed above the eaves of the buildings.

44. All general parking lot lighting will be shielded and directed in such a manner as to not produce harmful affects upon neighboring property.
45. The lighting for all of the uses within the PUD will be subject to Review and approval of the City of Morgan Hill.
46. Building mounted lighting to be a traditional or historical style to complement the architecture. See **Exhibit A-10**
47. No neon lighting/signage will be placed within framed area of windows.

Parking and loading:

48. Parking shall be screened from public view through the use of berming, hedge row planting, shrubs, trees, fences or walls, or any combination thereof, providing that no more than 35% of the total screening shall consist of fences or walls. At time of installation, shrub plantings shall be minimum 5-gallon size.
49. No angled parking or one-way drive aisles shall be utilized in the parking lot.
50. Parking areas will be designed to include provision for pedestrian walkways to provide access to building entrances. Walkways that cross traffic lanes shall have special design features such as raised and/or textured pavement, colored concrete, or combination thereof. Walkways will be provided through landscaped areas to protect landscaping from foot traffic damage.
51. Parking areas of adjoining properties will be located to utilize reciprocal access and shared parking whenever possible.
52. Loading areas and docks will not be located adjacent to or readily visible from Condit Road, E. Dunne Avenue or Murphy Avenue. A solid wall architecturally compatible with the building shall screen loading areas along these frontages. This wall shall be screened with landscaping consisting of either a planter or vines.
53. Truck deliveries will be limited to 7 a.m. to 7 p.m., Monday through Saturday.
54. Parking lots will be designed to provide for a safe and efficient movement of vehicles between properties by providing joint access easements whenever possible. Cross access easements and drive aisles will be provided throughout the PUD.
55. Drive aisles will allow for complete circulation within the PUD, with sufficient width for emergency vehicles, and shall not include dead end drive aisles.
56. Adequate auto stack-up areas will be designed to permit a minimum of two cars to enter the parking lot area without obstructing either street through traffic or vehicle

backup areas within the parking lot. A minimum 40' stacking distance will be provided between the curb and the first parking space for this purpose.

57. The number of curb cuts connecting the site with collector or arterial streets shall be minimized. Mutual access easements and mutual driveways will be used to minimize paved areas and curb cuts.
58. A minimum 5-foot wide walkway or landscaping will be provided around architectural features to provide a visual of pedestrians crossing into the drive aisle from the building fronts where applicable.
59. Access to property and circulation shall be safe and convenient for pedestrians, cyclists, and vehicles. Vertical and horizontal sight lines shall be sufficient to ensure safe vehicular and pedestrian movements.
60. Parking will be provided in accordance with the City of Morgan Hill zoning ordinance relative to the type of use. However, in consideration of the reciprocal access and shared parking for properties within the PUD a reduction in required parking may be considered by the City of Morgan Hill predicated upon the following:
 - a. A reduction based upon storage and non-public areas may be considered.
 - b. The installation of bicycle racks.

Signage and displays:

The purpose for a sign program for the *East Dunne Avenue PUD* is to provide guidelines for signage that will insure that all signage throughout the PUD will be uniform. Signs will be of high quality materials and consistent with the architectural theme of the PUD. Existing businesses within the PUD currently have monument signs within the landscape area at along road frontages shall comply with the new program when any major change is made to an existing sign. The design of monument signs should blend with the architecture of the building. Stucco, cast stone or slump block will be used on the monument signs when used as an accent on the main structure.

61. Signs shall have design elements consistent with the Architectural theme of the building. Signs shall be monochromatic within each work except in the case of logo boxes. Individually mounted channel lettering and logos shall be utilized for building and monument signs. The use of the same color as an adjoining tenant is to be discouraged. All sign applications will be considered on a case by case basis and must be reviewed and approved by The City of Morgan Hill Community Development Department prior to installation. See Exhibits attached by "New Directions" sign company, as amended by the Architectural Review Board for attachment details.

62. A maximum of three monument freestanding signs [1 per parcel] shall be allowed at the street frontages. The allowable monument sign area shall be one [1.0] square foot per foot of building frontage with a maximum sign area of 48 square feet on each side. The monument sign will display the major tenant of each parcel. The street address may be placed upon this sign in 6" minimum high letters
- a. The monument sign shall be a maximum of 6 feet in height and shall be located within the 30-foot landscape buffers. The base of this sign may be set upon a 2 foot high mounded berm in which event the top of this sign may be 6 feet above the city sidewalk opposite the sign location.
*See **Exhibit A-11** and exhibit attached by "New Directions" sign company as amended by the Architectural Review Board.*
63. Wall mounted signage shall have a maximum allowable area of one square foot for each lineal foot of building frontage nor exceed 80% of the width of the frontage, or leasehold, where the signs are to be installed. Wall mounted signs and logos shall be allowed along the building elevations fronting Condit Road, East Dunne Avenue and Murphy Avenue and buildings north facing elevations. The allowable area for each frontage shall be calculated separately based upon the lineal footage of the wall facing the street to which the sign is to be mounted. Wall mounted signs and logos may be externally illuminated. *See Exhibits attached by "New Directions" sign company, as amended by the Architectural Review Board.*
64. The use of indirectly illuminated corporate logos and trade style shall be permitted provided such logos or trade styles are within the allowable sign area.
65. No signage shall be placed/attached above the eaves or roofline of the building.
66. All wall-mounted signage on APN 728-17-017 facing the residential zone property shall be mounted at a twelve feet maximum height.
67. The illumination of all sign components shall be uniform in intensity over all of the illuminated surfaces. No noticeable spots or shadows will be permitted.
68. Tenants shall not place, construct, or maintain within the PUD any advertisement media, including searchlights, flashing lights or loudspeakers. Signs that are moveable or transportable (placed on vehicle or pedestrian traffic areas) will not be allowed.
69. One flagpole shall be allowed. The flagpole may include ground lighting.
70. Signage attached or painted onto windows will not be allowed with the exception of the Holiday season.
71. Signage guidelines will apply to all parcels/ buildings and/or tenants that currently exist or proposed within the PUD.

Utilities:

72. All future development applications for storm water detention and the appropriate utility and public service providers shall be subject for review and approval by the City of Morgan Hill. Storm water detention will be provided for each parcel in accordance with the City of Morgan Hill drainage ordinance. Storm water detention may be achieved by detention pond(s) on or off site, below ground enlarged pipe systems on site, or combination thereof. No detention pond will be allowed within the required thirty-foot wide landscape buffer along Condit Road, East Dunne Avenue and Murphy Avenue.
73. All above grade utility devices such as fire service detector checks and backflow preventors will be screened with berms and landscaping. In addition all above grade utility devices such as fire service detector checks, fire department connections and backflow preventors placed within the Condit Road landscape buffer area will be painted a uniform color to lessen visibility, and these facilities shall be installed as low as the codes allow.
74. Transformers shall not be placed within the East Dunne Avenue landscape buffer area and shall be screened with landscaping material.

DpC

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**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – MAY 21, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:31 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers and Mayor Kennedy
Absent: Council Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSION:

Closed Sessions were deferred to the conclusion of the Joint Regular City Council/Special Redevelopment Agency meeting.

City Attorney Leichter announced the following closed session item:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Legal Authority:	Government Code Section 54965.9(a)
Case Name:	Santa Clara Valley Audubon Society v. City of Morgan Hill
Case Number:	Santa Clara County Superior Court, No. CV 815655
Attendees:	City Council, City Manager, City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 9:34 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 11:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced that City Council authorized the acceptance of the settlement agreement relating to Santa Clara Valley Audubon Society v. City of Morgan Hill.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 11:07 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – MAY 21, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:31 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers and Mayor Kennedy
Absent: Council Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSION:

Closed Sessions were deferred to the conclusion of the Joint Regular City Council/Special Redevelopment Agency meeting.

City Attorney Leichter announced the following closed session item:

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION:

Pursuant to Government Code 54957

Public Employee Performance Evaluation:

City Manager

Attendees:

City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 9:34 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 11:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced that no reportable action was taken in closed session relating to the above listed closed session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 11:07 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – MAY 23, 2003**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 12:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Chang, Sellers and Mayor Kennedy
Absent: Council Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSION:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 12:01 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 1:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced that no reportable action was taken in Closed Session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 1:04 p.m.

MINUTES PREPARED BY:

IRMA TORREZ, CITY CLERK

**CITY OF MORGAN HILL
JOINT REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MAY 21, 2003**

CALL TO ORDER

Mayor Pro Tempore/Vice-chair Chang announced that Mayor/Chairman Kennedy and Council/Agency Member Sellers have been delayed. Therefore, items necessitating action would be delayed.

City Attorney Leichter indicated that the meeting can not technically be started but that the two council members present can hear reports from the City Manager and City Attorney and any other reports that would normally be heard before a meeting.

CITY COUNCIL SUB-COMMITTEE REPORTS

Council Member Carr reported on the Legislative Subcommittee, indicating that the Subcommittee met last week to review several legislative bills. He highlighted the legislative bills distributed this evening and identified the Subcommittee's recommended position on each of the bills.

Mayor Pro Tempore Chang indicated that she, Mayor Kennedy, Council Member Sellers, and City Manager Tewes made a trip to Sacramento last Wednesday and Thursday. She stated that on Wednesday, there was an announcement of the Governor's new budget proposal. The announcement was not as bad as proposed six months ago. There is an approximately \$40 billion deficit on the State's budget. The Governor is proposing to make up the deficit in two years. Within the two years, the Governor will try to increase the sales tax by ½% and increase the vehicle license fee to the level of three-four years ago. With this proposal, the City's budget will not be impacted as originally anticipated. She said that it was a good Sacramento session. She indicated that local elected officials visited state legislators such as Senators McPherson and Torlakson; and Assemblymen John Laird, Simon Salinas and Manny Diaz to discuss the seriousness of the budget and the need to keep cities' budgets in tack. On the second day, City leaders spent a lot of time talking to Assemblyman Laird about the perchlorate problem and possible legislative actions that can be undertaken to assist the City with the perchlorate issue.

CITY MANAGER REPORT

City Manager Tewes indicated that the past week, staff introduced the budget process by delivering the recommended budget for Fiscal Year 2003-04. He said that this is a difficult budget as there are three major challenges facing the City: 1) local revenues and the local economy are not generating enough revenue to support the historic levels of services (revenues not keeping up with spending); 2) the City's costs continue to increase; and 3) although the Governor's proposal is somewhat encouraging, it is not receiving the rave review everywhere in Sacramento. Therefore, staff is still concerned about the uncertainty of the State's budget and its impact to the City. He indicated that later this week, the Council will begin a series of meetings to review the budget. Public input will be sought on June 11 and June 18. With respect to perchlorate, over the past several months, some wells in the San Martin and

Morgan Hill community have detected trace amounts of perchlorate. He stated that for drinking water in Morgan Hill, all residents can be assured that the City has taken extraordinary steps to make sure that the water being delivered to the community is safe and meets or exceeds all of the State's standards. Staff has done so even when state regulations would not require the City to take wells out of service. City staff will continue to monitor wells on a monthly basis. He stated that the next monthly report will be made available next week. He stated that the City has gone beyond required regulations of the State, both in monitoring and testing. The City has gone beyond by taking wells out of service even though they have not reached the levels required under State regulations.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the Monthly Litigation Report has been distributed, noting that the only change from the previous report is the deletion of the Calpine case. She informed the Council that the petition for review has been denied by the California Supreme Court and that until such time that as an appeal is filed in one of the many Calpine cases the City has participated in, they will remain off the litigation summary.

SILENT INVOCATION

Mayor Pro Tempore/Vice-chair Chang invited the public to join her in a moment of silent invocation in memory of Ken Tougas.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor Pro Tempore/Vice-chair Chang, Scott Tougas led the Pledge of Allegiance.

RECOGNITIONS

Mayor Pro Tempore/Vice-chair Chang presented, and City Manager Tewes read, the Certificate of Recognition in Memory of Ken Tougas to Scott and Jack Tougas, recognizing him for his outstanding volunteer efforts for the Morgan Hill community during his lifetime.

Mayor Pro Tempore Chang said that this afternoon, Mayor Kennedy indicated that he would like to find a place in Morgan Hill to honor Ken Tougas on a permanent basis such as naming a street after him. Others suggested that a plaque be placed in the senior center to honor Mr. Tougas. She stated that everyone believes that Mr. Tougas is someone who cannot be replaced.

Mayor/Chairman Kennedy and Council/Agency Member Sellers entered and took their seats on the dias.

Mayor Kennedy stated that as Mr. Tougas' services this afternoon that he was a wonderful example of what community service is all about as he has done so much for the community. He stated that it is his hope that the legacy that he has set can be memorialized in some way in Morgan Hill so that his memory will not be forgotten. It is his hope that civic leaders will come up with a way to permanently honor and recognize Mr. Tougas.

OTHER REPORTS

None.

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 7:31 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers Mayor/Agency Chairperson Kennedy
Absent: Council/Agency Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CITY COUNCIL REPORT

Mayor Kennedy did not present a report this evening.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Queena Deschene, Live Oak High School student, invited the Council to Live Oak High School's "Evening of Diversity," a cultural event held every year by the Diversity Club. The event will be held on Tuesday May 27, at 7:00 p.m.

Cindy Gobin requested that the Council agendaize the discussion of a test garden for perchlorate next week as the City will be discussing water issues at that time. She is hoping that the community would be able to use Live Oak High School's garden if it is on city water to test for perchlorate. She said that the El Toro Elementary School has a garden. She hopes that the City urges the County or a responsible party to test the garden for any amount of perchlorate in what is grown. She felt that everyone would rest easy once the test results are in.

Mayor Kennedy indicated that the City would need to partner with the School District. He said that the City Manager and he will discuss Ms. Gobin's request with the School District or that the City-School Liaison Committee can discuss this issue at one of their meetings. He said that the City will seek the appropriate venue to address the request.

Mayor Pro Tempore Chang stated that all City wells are non-detect for perchlorate. She inquired whether it was being suggested that the City go outside of its jurisdiction for water testing.

Ms. Gobin indicated that the City's wells are returning as non-detect which means that there is less than 4 parts per billion of perchlorate in the City's well. However, she has read various different reports on how much vegetables concentrate the perchlorate in leaves. It was indicated, in meetings held in San Martin that root stocks may absorb perchlorate at one level, leaves and other fruits at another level. She felt that the only way to test if non-detect perchlorate is under 4 ppb is to grow vegetables and test them. If it is zero or a non-detect number, she felt that it would be a wonderful thing.

City Manager Tewes said that it would be important to discuss this issue with the County Agricultural Commissioner who has expressed concern about the need for controlled experiments and careful examination of the data. The Commissioner has indicated that he is concerned about the effects of perchlorate. If there needs to be discussions with the County Agricultural Commissioner, he was not sure if staff could return with this item next week as a discussion item.

Mayor Kennedy agreed that the City has to work with the office of the County Agricultural Commissioner as well as the School District/School Board to see what makes sense.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that items 5, 11, 16 and 19 be removed from the Consent Calendar. Council Member Sellers indicated that he has a question relating to item 10.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Items 1-4; 6-9; 12-15; and 17 as follows:*

1. **APRIL 2003 FINANCE AND INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.
2. **EXTEND THE TERMS OF APPOINTMENT FOR THE CURRENT ARCHITECTURAL REVIEW BOARD (ARB) AND PLANNING COMMISSION MEMBERS**
Action: **Approved** the Extension of Term Appointments for ARB Members: James Fruit, Rod Martin, and Jerry Pyle; and Planning Commission Members: Joe Mueller, Bob Engles, Bob Escobar and Ralph Lyle until Such Time that Successors Are Appointed.
3. **APPROVAL OF UPCOMING CITY COUNCIL WORKSHOP MEETING DATES**
Action: **Reviewed** and **Approved** the City Council Workshop Meeting Schedule.

4. **CITY SPONSORSHIP OF HOMETOWN HOLIDAYS INC. PROJECT**

Action: 1) **Approved** City Sponsorship of the Hometown Holidays Inc. Project to Conduct a Holiday Event, Including a Tree Decorating Contest for Local Schools, at the Community and Cultural Center; and 2) **Authorized** the City Manager to Issue a Letter to Hometown Holidays, Inc. Outlining the Terms of City Sponsorship.

6. **COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR CLASS II BIKE LANE AT LIVE OAK HIGH SCHOOL**

Action: **Adopted** Resolution No. 5668, Supporting the Application for Safe Routes to School Grant Funds for Construction of a Class II Bike Lane along the North Side of Main Street.

7. **APPROVAL OF LEASE OF NITRATE REMOVAL PLANT**

Action: 1) **Appropriated** \$38,000 from the Unappropriated Water Fund Balance to Fund a Temporary Nitrate Removal Plant at the Burnett Well Site; and 2) **Approved** Issuance of a Purchase Order to Ionics in the Amount of \$38,000 for the Lease of a Temporary Nitrate Removal Plant.

8. **AWARD OF CONTRACT FOR CONSTRUCTION OF MAIN WELL NO. 2 AND SAN PEDRO WELL EQUIPMENT PROJECT**

Action: 1) **Awarded** Contract to Conco-West Inc. for the Construction of Main Well No. 2 and San Pedro Well Equipment Project in the Amount of \$639,200.00; and 2) **Allocated** 10% Construction Contingency Funding in the Amount of \$63, 920.00 for this Project.

9. **ACCEPTANCE OF POLYBUTYLENE WATER SERVICE REPLACEMENT PROJECT, PHASE IV**

Action: 1) **Accepted** as Complete the Polybutylene Water Service Replacement Project, Phase IV in the Final Amount of \$357,384.00; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

12. **ADOPT ORDINANCE NO. 1617, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1617, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH (APN 764-32-024)/(DA-00-01: CHRISTEPH - KOSICH).**

13. **ADOPT ORDINANCE NO. 1618, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1618, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT**

AGREEMENT, DA 02-09 FOR MMP 02-02: DEWITT - MARQUEZ SUBDIVISION (APN 773-08-014).

14. ADOPT ORDINANCE NO. 1619, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1619, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-01: CHRISTEPH - KAMANGAR/PINE BROOKS TRUST (APN 764-32-025).

15. RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2003 QUARTERLY REPORT #1

Action: Accepted and Filed the Residential Development Control System (RDCS) First Quarter Report for 2003.

17. SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 30, 2003

Action: Approved the minutes as written.

5. COMMUNITY AND CULTURAL CENTER RENTAL RATES – Resolution No. 5667

Mayor Kennedy inquired if there was any progress on the insurance issue on the Community and Cultural Center rental rates.

Recreation and Community Services Manager Spier informed the Council that she and the Risk Manager are still working on getting quotes on a comprehensive policy for the facility.

Finance Director Dilles informed the Council that staff has been pursuing quotes from two insurance companies. One of these insurance companies led the City to believe that they would provide the City with a quote only to state that they could not provide the City with one. However, the insurance company stated that they could provide insurance for the Community and Cultural Center without the liquor liability. However, staff considers this to be one of its major risks; therefore, this proposal did not appear to be interesting. Staff is continuing its discussions with a second insurance company but that staff does not yet have an answer from them.

Council Member Carr said that several weeks back, staff came before the Council regarding insurance concern. Hearing now that staff is having trouble finding anyone willing to insure the City, he felt that the Council should revisit the previous report and give greater consideration to the idea of self insuring the Community and Cultural Center.

Mayor Kennedy requested that staff agendaize insurance discussion.

Council Member Sellers recommended that staff return with a status report regarding insurance for the Community and Cultural Center once the second insurance company provides staff with a response.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Adopted** Resolution No. 5667, Revising Rental and Service Fee Rates for the Community and Cultural Center.*

10. AWARD OF GALVAN PARK HANDBALL COURT AND LANDSCAPE BEAUTIFICATION PROJECT

Council Member Sellers indicated that the Council has not previously seen a project design or layout. He inquired whether this project was going to be an upgrade or whether there were to be substantive changes. If so, would the Council be able to see these changes?

City Manager Tewes stated that this project is an upgrade of existing facilities. He said that in the capital budget for next year, staff is proposing to conduct a master plan for the Galvan Park site with extensive review by the Parks and Recreation Commission as well as the City Council at that time.

Council Member Sellers indicated that he wanted to make sure that the City is not installing an improvement at this time that would be removed at a later date.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Awarded** Contract to Bellicitti & Pellicciotti Construction Co., Inc. for the Galvan Park Handball Court and Landscape Beautification Project in the Amount of \$70,724.00; and 2) **Allocated** 10% Construction Contingency Funding in the Amount of \$7,076.00 for This Project.*

11. APPROVE PURCHASE ORDER FOR REPLACEMENT SKID MOUNTED 75 KW DIESEL GENERATOR AND AUTOMATIC TRANSFER SWITCH AT “C” LIFT STATION

Mayor Kennedy noted that the report indicates that this is a fairly old facility and that it was his belief that the City replaced all of the old facilities. He inquired as to the age of this particular facility.

Director of Public Works responded that the facility is approximately 25-30 years. He indicated that the City has two old lift stations remaining and that this is one of them.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Purchase of a Skid Mounted 75kw Diesel Generator and Automatic Transfer Switch Replacement in the Amount of \$36,465.00.*

16. 2002 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY

Mayor Kennedy requested that staff present a report on this item.

City Manager Tewes reported that each year, the City is required under State law, but more importantly; the City wants to communicate with its customers, about the quality of the water that is provided. He said that it is the City's goal to meet or exceed all of the State standards. This confidence report indicates that the City has met or exceeded State standards. The confidence report also indicates that wells in San Martin and some of the domestic wells have detected for trace amounts of perchlorate, but not at levels that require that the City take action. The City has taken these wells off line as an abundance of caution. He stated that there was information contained in the annual consumer confidence report about all of the elements in the water, the levels that are established by state and federal laws, and how the City meets or exceeds these standards. He indicated that this report will be mailed to all citizens in the community over the next few weeks.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Received** the Informational report.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, **Approved** Consent Calendar Item 18 as follows:*

18. SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 30, 2003

Action: ***Approved** the minutes as written.*

19. REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF MAY 7, 2003

Mayor Kennedy indicated that he would be abstaining from the approval of the May 7, 2003 minutes.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-0-1 vote with Mayor/Chairman Kennedy abstaining and Council/Agency Member Tate absent, **Approved** the minutes as written.*

City Council Action

CONSENT CALENDAR: (continued)

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** Consent Calendar Item 20 as follows:*

20. COUNCIL RESOLUTION SUPPORTING GRANT FUNDING FOR TENNANT CREEK TRAIL, PHASE I

Action: *Adopted Resolution No. 5669, Supporting the Application for Santa Clara Valley Water District Trails, Parks and Open Space Grant Funds for the Tennant Creek Trail, Phase I.*

Mayor Pro Tempore Chang indicated that she would need to step down and recuse herself from agenda item 20.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, agreed to reconsider item 20.*

Mayor Pro Tempore Chang excused herself from the dias.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, on a 3-0 vote with Mayor Pro Tempore Chang and Council Member Tate absent, Adopted Resolution No. 5669, Supporting the Application for Santa Clara Valley Water District Trails, Parks and Open Space Grant Funds for the Tennant Creek Trail, Phase I.*

Mayor Pro Tempore Chang resumed her seat on the dias.

City Council Action

PUBLIC HEARINGS:

21. ANNEXATION APPLICATION, ANX-02-01: COCHRANE BORELLO I – Resolution No. 5670

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 with Council Member Tate absent, Adopted Resolution No. 5670, for Annexation.*

22. ZONING AMENDMENT APPLICATION ZA 02-15: EAST DUNNE-HO – Ordinance No. 1620, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy noted that the building is proposed to be brought up closer to the street, inconsistent with the adjacent building which is located to the rear of the site. He also noted that Nordstrom Park is

located on Murphy Avenue which also has an open/green space facing both Murphy and Dunne Avenues. Should the building be built as designed, it appears to be out of place in this context. He inquired whether the design process has commenced.

Mr. Bischoff indicated that the applicant has commenced with the design process. Further, it is the applicant's intent to submit plans that are very close, if not identical, to what has been presented this evening. Should the Council approve the zoning amendment application as submitted this evening, it would require that the building be placed next to the street and that the parking be located to the rear. He stated that when the City updated the general plan in 2001, there was an urban design section that encouraged buildings to be brought up toward the street to hide parking and create an urban feel. He said that one of the segments dealt with in the General Plan update was urban design that addressed parking and building designs and their relationship to the street and streetscape. He indicated that the setback from the front of the building to Dunne and Murphy Avenues is 30 feet from the property line; 40 feet from the curb.

Council Member Carr indicated that the City recently completed the Murphy Corridor Study and that the Council would be reviewing this Study in a couple of weeks. He inquired how this project would impact this Study or vice versa.

Mr. Bischoff indicated that this project reserves sufficient right of way, consistent with the existing General Plan. The existing General Plan shows Murphy as a four lane arterial. Two of the three alternatives that the Council will be reviewing as part of the Murphy Corridor Study shows Murphy as four lanes. The third alternative shows Murphy as two lanes. If the third alternative or other alternatives shows Murphy as two lanes, the City would have to move a section of pavement. However, it could be stripped in such a way to allow two travel lanes.

Council Member Carr stated that he seems to recall, as the Council asked for the Murphy Study to be undertaken, that it was considering the intensity of uses along this area and whether some of the intensities made sense according to what the City would find in the corridor itself. He inquired whether this would impact this PUD and the zoning, depending on what the use of Murphy will ultimately will be.

Mr. Bischoff indicated that staff looked at a reduction in the intensity of use. Because of the amount of through traffic in this area, staff did not identify any changes to the land use within the area that were sufficient to reduce the traffic volumes enough to mitigate or eliminate the need for Murphy Avenue to be four lanes or reduce it to two lanes. Staff was not able to find a sufficient reduction in intensity in land use to make a difference in part because there is as much through traffic in the area and part of it is due to the uses on Cochrane Road. He did not believe that there would be a conflict in moving forward with the approval of this PUD and the Murphy Corridor Study unless there is an alternative that was not included in the report.

Council Member Carr said that his concern is not that the City would make Murphy Avenue so big that it would impede upon this center but the intensity of the center is one that would limit alternatives for Murphy Avenue. However, he is hearing that this is not the case.

Mayor Kennedy opened the public hearing.

Vince Burgess, Development Processing Consultants, indicated that the applicant came to him after working closely with staff on design elements/location of the buildings. He said that there has been coordination with the Architectural Review Board members and that he has worked closely in tying in their recommendation. This project has worked toward the coordination of the circulation elements as well as the rights of way.

No further comment being offered, the public hearing was closed.

Council Member Carr stated his appreciation of Mayor Kennedy's concern as he has heard him mention this concern in other places where the City tried to draw buildings to the front. He noted that Mayor Kennedy has not been particularly pleased with how these projects have turned out. He was also concerned but that after viewing the map and the drawings, he was less concerned. He appreciated the tie in with adjoining pieces of property and that if there was a way to include a park in the corner, it would tie in nicely with Nordstrom Park. However, he felt that the design of the building would be attractive on the street front and that it should not be hidden in the back of the parking lot. He said that the General Plan Update Committee discussed this issue. Perhaps, the overall idea of having the buildings closer to the street does not fit perfectly across the entire community and that the Council needs to think about this policy in this context.

Mayor Pro Tempore Chang supported further discussion of this General Plan Policy issue because she did not believe that having buildings up the street should be required uniformly throughout the city.

Mayor Kennedy requested that staff agendaizing the General Plan policy issue for discussion and direction to the Planning Commission (buildings siting).

Council Member Sellers recommended agendaizing this item after Council Member Tate returns because of his background and interest on this subject.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council on a 4-0 vote with Council Member Tate absent, **Waived** the Reading in Full of Ordinance No. 1620, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1620, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A DEVELOPMENT PLAN AND DEVELOPMENT GUIDELINES FOR A 3 LOT COMMERCIAL***

DEVELOPMENT ON A 3.88-ACRE PLANNED UNIT DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE BETWEEN CONDIT ROAD AND MURPHY AVENUE (APNS 728-17-16, 17 & 23) *by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers; NOES: None; ABSTAIN: None; ABSENT: Tate.*

Mayor Kennedy indicated that he has a speaker card from Cynthia Bunch relating to agenda item 13, noting that the Council already approved item 13 as part of the Consent Calendar. He requested that Ms. Bunch meet with him during the break to discuss item 13.

City Council Action

OTHER BUSINESS:

23. FILLING UPCOMING VACANCY ON THE MOBILE HOME RENT COMMISSION

Council Services and Records Manager Torrez presented the staff report.

Council Member Sellers said that Mr. Moore's service on the Mobile Home Rent Commission has been long term. He has done a great job and is a dedicated Commissioner. He did not see a reason for having the Council interview Mr. Moore for reappointment.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Reappointed** Mark Moore to Serve a Two-Year Term, Expiring June 1, 2005; serving as the tenant representative to the Mobile Home Rent Commission.*

24. CITY CO-SPONSORSHIP WITH THE MORGAN HILL SISTER CITY COMMITTEE FOR "JAZZ ON THE GREEN" CONCERT

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that City co-sponsorship of this event will allow the Sister City Committee to promote the event in the City Visions Newsletter. Further, the Sister City Committee is not requesting funds for this effort. He informed the Council that Chuck Dillmann, president of the Sister Cities Committee, was in attendance to answer any questions that the Council may have.

Mayor Kennedy opened the floor to public comment.

Chuck Dillmann indicated that the Sister Cities Committee is not requesting funding but is requesting City co sponsorship in order to be able to advertise this event in City Visions and for the prestige of having the City involved in this event. He stated that there will be two jazz bands performing: Britton Jazz Band and the San Jose Buscher Jazz Band.

Mayor Kennedy said that this is a project that the Sister City Committee has been partnering with the Britton Jazz Band on this event. It looks like a wonderful opportunity for the community. This event will take place on Friday, June 6, 5:30 p.m. at the Community Amphitheater. He requested the Council's support as a co sponsor.

Mr. Dillmann said that there is no cost to attend the event but that donations will be accepted to help defray the bands cost to Italy in 2004.

No further comments were offered.

Council Member Sellers said that at last week's Art a La Cart event, it was great to see that these types of events can take place. He stated his support of the event.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Tate absent, **Approved** a City Co-Sponsorship/Promotion with the Morgan Hill Sister City Committee of the "Jazz on the Green" Concert.*

25. MORGAN HILL GENERAL PLAN: REVIEW OF EFFECT OF GROWTH RATE ON TRAFFIC IMPACTS

Director of Community Development Bischoff presented the staff report. He informed the Council that the City needs to develop standards for unsignalized intersection levels of service. He requested that the Council direct staff to establish this level of service for unsignalized intersections. Staff would bring this back as part of the next round of General Plan amendments to be considered by the Council in July. At the request of Mayor Kennedy, he defined the different traffic service levels.

Mayor Kennedy felt that it appears the City is accepting, in theory, traffic level of service standards (LOS) of D+. He felt that it was important to understand what an LOS D+ means as compared to C+.

Mr. Bischoff indicated that he would provide the definitions of the various levels of service standards but that it was his belief that the level of service D allows for some traffic delay. However, the delays would suggest that if an individual is at a signalized intersection, you can expect a wait of 30 seconds or more.

Council Member Carr said that the General Plan Task Force did not believe that LOS D or D+ were passing grades. However, there was a trade off in that the Task Force was not willing to state that intersections needed triple left hand turn lanes or double right hand turn lanes in areas that are clearly not appropriate for Morgan Hill. The Task Force was willing to accept a level that may, on the surface sound unacceptable, but that it was clearly much better than the trade off would have been.

Mr. Bischoff said that although an LOS D/D+ may sound unacceptable, it is clearly superior to the level of service one would experience in other parts of Santa Clara County, north of Morgan Hill.

Council Member Sellers said that this information would be helpful as the City proceeds on this and in upcoming years.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Kennedy noted that staff mentioned an example of a situation where all development would occur along Cochrane and very little on Tennant or vice versa. He stated that each project would be required to provide its own noise and traffic impacts associated with development. Therefore, the Planning Commission and the City Council will have the opportunity to review the impacts before moving forward with a project.

Mr. Bischoff indicated that staff is not suggesting that the City should lower its standards. However, through the traffic impact analysis, the City will determine ways to adequately mitigate the impacts.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **Directed** Staff to Include with the Next Amendments of the General Plan a Policy Establishing a Level of Service Standard for Unsignalized Intersections.*

Redevelopment Agency Action

OTHER BUSINESS:

Start Here

26. ROYAL COURT HOUSING PROJECT LOAN

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that Jan Lindanthal with South County Housing was in attendance to make a brief presentation to the Council on the project.

Chairman Kennedy opened the floor to public comment.

Jan Lindanthal indicated that the project was put together in response to Council comments from December 2002 regarding the density of the surrounding properties. She identified the zoning and densities of surrounding properties. She indicated that the density of the proposed site would be 6-14 dwelling units per acre along the front and the multi family portion would be 18-20 dwellings units per acre. She stated that the site plan has been reviewed by the design review committee. Changes have been made based on comments and that they have been incorporated into the design. The architect was requested to produce conceptual elevations of what the townhouses would look like, looking from Del Monte Avenue. She indicated that two significant oak trees were driving development and constraining the density on the site. She requested Agency feedback on the direction South County Housing is heading. She said that it is her intention to move forward with a PUD zoning application and tentative

map submittal in late summer or early fall in order to start construction of the first phase of the project in Spring 2004. Based on comments received at the Comprehensive Housing Strategy held a few weeks ago, she has been looking at alternatives to increase the density of the townhouses. She stated that this could be done in a number of ways by adding additional units along Del Monte Avenue which would be the least preferable from her perspective. Four units could be added to the rear or in another portion of the site. However, the challenge of these areas is parking (shared parking arrangement with the commercial portion of the project). She requested Council feedback regarding the proposed mixed use component. She indicated that South County Housing has secured \$200,000 in funding from the County Home Program that will be used to supplement the City's financing; making four of the townhomes affordable to low income homebuyers.

Chairman Kennedy inquired as to the range of affordability of the units.

Ms. Lindanthal responded that assuming the 13 unit scenario, $\frac{1}{3}$ of the units would be at low (up to 80% of median); $\frac{1}{3}$ of the units would be at 80-100% of medium; and $\frac{1}{3}$ of the units would be at the moderate income range (up to 120% of median). She indicated that commercial uses are adjacent to the use, including Hill Haven Mobile Home Park. She stated that she has some concern about transitioning between the commercial and residential uses. This keeps South County Housing staff thinking whether or not a mixed use makes sense as this may help with the transition of uses/create a streetscape along Monterey Road.

Agency Member Carr said that the a value he finds in considering the mixed use is that by adding units to the front, in the commercial area, some of the units could be removed from the middle of the site, retaining the overall number of units. This would open up parking in the middle of the site so that the shared use agreement for parking would not be as great from one end of the project to the other. He noted that staff indicated that there were 13 existing units and that there is a possibility of adding four units.

Director of Business Assistance and Housing Services Toy noted that several months ago, the Agency modified a policy and allowed for three exemption units based on the Butterfield extension to Tennant. Therefore, there are three credits for three single family homes. To add a fourth unit would necessitate going through measure P. He said that this project could have the potential of moving forward with 16 townhome units without having to go through a Measure P competition.

Agency Member Carr inquired how the project would incorporate the additional three units in order to achieve the maximum amount of units for the project.

Ms. Lindanthal indicated that South County Housing staff looked at a couple of different options to incorporate three additional units. One alternative would be to add the three units along the frontage, encroaching slightly into an open space area. This would create a monolithic streetscape and less variation. A second alternative would be to add three units to a section of the project which decreases the parking area to be provided. Another alternative would be to add three units at a different section of the site but would also impact the parking. She indicated that it is proposed to have 16 townhomes and 44 apartment units for a total of 60 units. This would result in slightly under 12 units per acre.

Chairman Kennedy recommended that a portion of the adjacent vacant land be purchased or that the entire commercial property be purchased.

Ms. Lindanthal indicated that she has been working toward this effort.

No further comments were offered.

Mr. Toy informed the Agency that the design is in the conceptual stages and that he would still need to work closely with the Planning department to identify the different issues/concepts. He said that there will still be an opportunity for the Agency to review the design concepts. He indicated that for the ownership units, the City would convert part of the loan into silent seconds/down payment assistance. When these units are sold, the Agency would get paid back with respect to the apartment units, it would be conceivable that the City would get some money back. He said that this is an open ended issue as the City does not know what the financing sources will be.

Agency Member Sellers said that it would be an attractive option to be able to reuse funds, especially when the future of the RDA is unknown. He encouraged everyone to do what they can to structure the assistance such that the City is able to reuse the funds. He concurred with Agency Member Carr about wanting to have more units (up to 16 units). However, he was anxious about placing them all on the frontage of Del Monte Avenue. He recommended that the project maintain an interest as much as possible. Regarding the Monterey frontage, he strongly favored a mixed use as it would provide a transition in uses. He noted that residential units exist along Monterey Road and that there is a mixed use in the area. He recommended that a higher standard be considered as part of the mixed use. He felt that it was important to spread the traffic flow and the parking throughout the project. It made sense for the City to do what it can to minimize the loan amount. He recommended that the project's cost be further minimized through other loans or options as the City needs to start looking at ways to reuse and recycle funds.

Chairman Kennedy concurred with Agency Member Sellers that this is a good start and that he likes the general idea of the project. He encouraged City staff and South County Housing staff to be creative in assembling more parcels in order to make the project work a little better as the project appears to be confined by the adjacent uses. He stated that this area has historically experienced problems based with the mixed of land uses. He requested that South County Housing and City staff do everything possible to be creative in finding ways to make the project work. He stated his support of the project in concept and agreed that the City needs to move forward with it.

Action: *On a motion by Vice-chair Chang and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Tate absent, **Approved** a Loan of Up to \$3.75 Million Dollars to South County Housing Corporation (SCH) to Develop the Royal Court Housing Project.*

Action: *On a motion by Vice-chair Chang and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Tate absent, **Authorized** the Executive*

Director to do Everything Necessary and Appropriate to Execute and Implement the Loan Agreement.

Action: *On a motion by Vice-chair Chang and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Tate, **Appropriated** \$350,000 from Fund 327.*

27. FACADE IMPROVEMENT PROGRAM

Director of Business Assistance and Housing Services Toy presented the staff reports for items 27 and 28 at this time.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

28. RENOVATION OF THE ISAACSON GRANARY

Mayor/Chairman Kennedy inquired as to the process to proceed with a deferred improvement agreement.

Mr. Toy addressed the deferred improvement process, indicating that the property owner would have to appear before the Planning Commission. The Planning Commission would have to make specific findings and indicate that this application qualifies for an exemption. Based on this action, the Planning Commission would make a recommendation to the Council. The Council would then need to decide whether to accept the report and grant the exception. He clarified that the City does not have a mechanism to defer improvements in the Municipal Code.

City Attorney/Agency Counsel Leichter indicated that the Council amended the municipal code relating to deferred improvement agrees as there were some questions regarding the legalities of deferring the improvements. Also, there were duplicate provisions to other deferred improvement programs.

Director of Public Works Ashcraft indicated that the City has approximately 40-50 old deferred improvements agreements that are recorded against lands that states that at some future date the City would return to request installation of improvements. He indicated that former City Attorney Baum tried to enforce one or more of the deferred improvements agreements but that he could not enforce them in court in the early 1990s. He came back to the Council and requested that the Council take this provision out of City codes. He said that there is a project at this time on Tennant Avenue near Church Street that has an old deferred improvement agreement that states that the property owner should dedicate land and install the improvements, when requested. He indicated that the property owner is doing neither. He said that this is an issue that he and the City Attorney are dealing with at this time. Therefore, a deferred improvement agreement does not mean that the improvements will be installed when needed. He indicated that there is no authority to enter into a deferred improvement agreement at this time. He said that the process addressed by Mr. Toy is a provision contained in the City code that

has not been exercised in several years and is similar to a variance that is within the purview of the Planning Commission. Should the Planning Commission be able to make variance findings, they could recommend the City Council grant relief to the developer/property owner.

Mayor/Chairman Kennedy inquired if there was a mechanism whereby the City could have a legally binding deferred agreement that would work (e.g., property owner places funds into a trust that can be called upon when the City requires that the improvements be installed).

Mr. Ashcraft said that funds in an account could work but that the City Attorney would need to address the agreement. He indicated that what the City has been doing for years is that someone installs the undergrounding, or if the property owner/developer does not believe that they should provide the undergrounding and want to pay in lieu fees, the Council considers the request to approve the in lieu fees. The City is paid cash and this money is put into an underground fund to be used at time of development that can be applied toward a larger scaled project.

Mayor/Chairman Kennedy opened the floor to public comment.

Charles Weston addressed the deferred agreement and stated that he was trying to set up a process such that when he develops the vacant piece of land as a Measure P project, he would state in his narrative that he would agree to underground the utilities not only for that portion of the residential portion of the project but for the remainder of the Granary. He indicated that undergrounding would cost approximately \$600 per linear feet. If he is made to pay the in lieu fee, he would only be required to pay \$100 per linear feet and the City would pay the rest. He did not believe that this was a deal that the City could pass up. He did not believe that it was fair for the City to install the undergrounding that he owns but that he cannot afford to install the improvements at this time. Deferring the improvements until he develops the northern portion of the site would save the City a lot of money. He stated that when he first started the process of determining how much funding he would need, he was originally under the impression that on and off site improvements would not be required similar to the development of Giancarlo's restaurant who was given an exemption. He said that it would be a convenience for him and Mr. Isaacson to split the total cost into a manageable amount. This would allow him to get a loan of \$350,000 from the City, include the \$50,000 that he has put in and another \$50,000 subsequent to funding being approved. He did not anticipate having to perform the undergrounding nor was he anticipating to perform any of the on/off site improvements. He stated that the cost of the undergrounding, in lieu fees or any off site improvements would be offset by the City granting him facade improvement grants. He realized that the City may have believed that granting him the \$350,000 was all that would be required to develop the Granary site. He stated that he considered this to be a loan that the City would get back with interest within a certain prescribed period of time and that the facade improvement would be a grant. He was not stating that he was an exceptional case but stating that he has a building that needs improvement and was seeking entitlements that the City has to offer to improve his property.

No further comments were offered.

Council/Agency Member Carr recommended that no action be taken on the request this evening as one of the members of the Economic Development Committee was not present this evening. He felt that several of these issues have not been considered by the Economic Development Committee. He was not suggesting that the request needs to go back to the Committee because he understands that there is a lot of interest on the Council/Agency to move forward on these types of economic development items. He felt that having a five member council consider this item would be a great advantage and would give staff and the applicant time to spend talking about these issues. He noted that there has been some discussion about ways of coming closer together. He felt that this opportunity would present itself with coming back with a better proposal that includes the entire package instead of different pieces being strung along to a package.

Council/Agency Member Sellers inquired whether a 30-day delay would interfere with the applicant's plans.

Mr. Weston said that the close of escrow is scheduled for June 20, 2003. This period was extended from June 9 recently. He does not know if he would know all he needs to know everything about the financial components. He noted that the \$350,000 loan document is scheduled to come before the Agency on June 18. He said that he has worked closely with Mr. Toy and felt that the compromise reached was fair. He did not know if things would change in 30-days regardless of whether Agency/Council Member Tate was present.

Mayor Pro Tempore/Agency Member Chang inquired as to the amount of the in lieu fee.

Mr. Toy responded that the in lieu fee would equate to approximately \$37,000 on Depot Street (370 linear feet at \$100 a lineal foot). He indicated that the Monterey would not have any requirements placed on it until such time that it develops. He indicated that staff approximates that it would cost \$300 a linear feet to underground the utilities.

Mr. Ashcraft indicated that staff does not know the actual cost of undergrounding and that in order to determine the actual cost; someone would have to design the improvements. Staff estimates the cost of the total undergrounding of Depot Street at \$300 per lineal feet. If Mr. Weston pays \$100 per lineal feet, it is one street that would cost the City more to install the improvement than it collects. He indicated that the \$100 collected is based on an average. He indicated that the City receives Utility 28 funds periodically from PG&E for undergrounding. He said that undergrounding would make the area safer and aesthetically pleasing. He indicated that once the City allows someone to pay in lieu fees, undergrounding would not be required. Therefore, the City would be paying for the undergrounding. He said that it would be up to the City to underground at a later date. He stated that it is estimated to cost \$300 per linear feet in today's cost and that this cost would increase in later years. If allowed to collect only \$100, it would be consistent with other projects in the community.

In response to Mayor/Chairman Kennedy's question, City Attorney/Agency Counsel Leichter indicated that the City has not allowed a developer to pay in lieu fees over time?

Mr. Toy said that the city does not currently have a program for utility undergrounding but that it does have a program for sewer and traffic financing programs. The City also has a small business fee deferral program which could help to finance the project. He said that 2-3 years ago, staff brought before the Council/Agency a conceptual program to help with utility undergrounding and provide some funds to assist with payment of in lieu fees. At that time, the City decided not to continue with this program.

Mayor/Chairman Kennedy noted that this project would remove a blighted area and that he would like to see this project move forward in a way that was fair and equitable to everyone similar to the sewer and water loans. He stated that he would be supportive of a creative way to allow this project to move forward.

Council/Agency Member Sellers concurred with moving forward with the facade grant. However, he felt that the discussion of utilities is a larger issue. He noted that the applicant is willing to work with the City but that the suggestions are different from what the City is used. He recommended that this discussion take place on June 18 and that staff be given the opportunity to review some of the options to determine what would make sense as far as the whole issue of deferring improvements and study any legal issues. He said that facade improvement grants exist to help projects go above and beyond the kind of site improvements that an owner can perform on their own. He said that this is a project that will perform minimal improvements but could do more with a facade grant. Therefore, he would recommend that the Council/Agency move forward with the facade grant. He felt that there were broader policy issues relating to utility undergrounding and recommended that further discussion be deferred to June 18.

Mayor Pro Tempore/Vice-chair Chang concurred with the comments expressed by Council/Agency Member Sellers. She considers this property a nice piece of property and that it needs a beautification program to enhance the site. Therefore, she would support the facade program. She would agree to discuss the undergrounding of utilities or a different program on June 18.

Council/Agency Member Carr stated that he did not oppose the project. However, he did not believe that the City is proceeding with the correct one. He stated that as an economic development committee, the committee requested that the applicant come back and work with staff on a complete project. What is being seen this evening is the result of not getting the complete project months ago. The Council/Agency decided, on a 3-2 vote, that it would grant a \$350,000 loan and move the project forward. Had the Agency/Council reviewed a complete project consisting of both parcels, it would have been easier to address the public policy issues of the undergrounding. He felt that the City will miss an opportunity to consider the entire area, an area important to the entire downtown plan. By deferring the undergrounding, the City is deferring improvement to the downtown area. He supported the request for the facade improvement grant as this is what the program was established for. If the entire project had been put together and all the financing was put in place, the City could have worked out the details. He indicated that he would not have minded a triple facade grant. As the Council/Agency is not looking at the property as an entire package, opportunities are being missed. What the City is doing is encouraging individuals to come before the Agency/Council with what is needed today versus the entire concept. He did not believe that this is how economic development should be undertaken or a way to improve blighted areas. He noted that this is an important area as talked about in the Downtown Plan.

He recommended that staff be encouraged to work with the applicant to consider the entire package. He understood that everyone wants to move forward with economic development and get some projects going. He felt that the Council/Agency should be taking the time to do things right the first time. Therefore, he could not support either actions presented on the agenda before the Council/Agency this evening.

Council/Agency Sellers concurred, in general, with a number of Council/Agency Carr's comments. He felt that the reason the project returned from the night the Council approved the \$350,000 loan was due to a misunderstanding about the undergrounding. Based on the unknown portion of the project relating to Measure P, the applicant could not submit an entire project. He felt that the City has an opportunity to significantly help jump start commercial development. He felt that the City would see the entire project when the Council/Agency reviews the utility undergrounding issues. He felt that there would still be some loose ends relating to the project, but noted that this is a unique project. He felt that the City needs to move forward on this portion of the project for the reasons identified this evening.

Mayor Pro Tempore/Vice-chair Chang felt that the downtown was a new focus and should remain as a main focus. It was her hope that the Council/Agency uses this project as an example and that from henceforth, every project that comes before the City will be an entire package. She noted the Council/Agency has already approved one segment of the project. She felt that the City is looking at this project as a whole project at this time. She would support looking into the underground issue in June.

Agenda Item 27

Action: *Agency Member Sellers made a motion, seconded by Vice-chair Chang, to approve the request for a triple facade grant for the Granary project. The motion carried 3-1 with Agency Member Carr voting no and Agency Member Tate absent.*

Agenda Item 28

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Chang, the Council/Agency Board, on a 4-0 vote with Council/Agency Member Tate absent, tabled item 28 until June 18, 2003, requesting that staff review options and explore options for the deferral of undergrounding utilities.*

City Manager/Executive Director Tewes indicated that this was a unique and unusual process on how to proceed with these types of projects. He felt that the City has learned a lesson and that this unusual process would not be likely to be repeated because the Council has authorized a request for proposal process for downtown projects. Specifically, the Council/Agency has authorized staff to seek interest on the police building. In each of these instances, staff would require full packages. What was seen in this instance was that the applicant was making certain assumptions that were not required and therefore sized his loan request to the Council/Agency on assumptions that turned out not to be the case. He stated that the process will be different from here on out.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Legal Authority: Government Code 54956.9(a)

Case Name: San Jose Christian College v. City of Morgan Hill

Case Number: Ninth Circuit Court of Appeal, No. 02-15693

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 9:34 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 11:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session but that the Council/Agency would adjourn the closed session items to Friday, May 23, 2003, 12:00 p.m.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:07 p.m. to Friday, May 23, 2003, 12:00 p.m. to discuss closed session item 1.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MAY 23, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 8:10 a.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers and Mayor/Chairman Kennedy
Absent: Council/Agency Member Tate.

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on the agenda. No comments were offered.

City Council and Redevelopment Agency Action

WORKSHOP

1. WORKSHOP REGARDING PROPOSED 2003-2004 BUDGET

City Manager/Executive Director Tewes presented the Council with the proposed Fiscal Year 2003-04 Budget.

Mayor/Chairman Kennedy indicated that he, Council/Agency Member Sellers, City Treasurer Roorda and Finance Director Dilles currently serve on the Finance & Audit Committee. He recommended that there be discussion about possible revenue enhancement measures.

Council/Agency Member Sellers stated that the Finance & Audit Committee reviewed the proposed budget and possible options, indicating that the Committee did not offer recommended budget adjustments because it was felt that the budget is the responsibility of the entire Council.

Finance Director Dilles identified new possible revenue sources:

- Bring new businesses into town [e.g., auto dealer(s)]

- Expand existing businesses
- City-wide lighting and landscape district
- Utility tax
- Public Safety parcel tax
- Recreation parcel tax

Council/Agency Member Sellers stated that it was important to point out that these were long term solutions and that no one is thinking of imposing these revenue enhancement measures at this time. However, it was felt that these measures should be investigated. It needs to be understood that these revenue enhancement measures would need to be balanced with other budget considerations. He felt that long term budget considerations need to be considered for recreation services. He recommended the establishment of a Council subcommittee to discuss these issues.

Mayor/Chairman Kennedy stated that it was important to assess the community to determine what level of service it is willing to support in terms of revenue enhancement measures. This information needs to be determined soon. With respect to the reserves, he noted that the City's reserves are higher than other communities (at 40%). He stated that the reserves can be used to assist the City come in at a soft landing. The question is how much of the reserves are to be used.

City Treasurer Roorda felt that there was a threshold that the City could get by with as the City continues to study the budget. He recommended that the City consider increasing productivity to close the budget gap.

Council/Agency Member Sellers expressed concern with requesting staff to increase its productivity when this is already occurring. He noted that the Council is asking more of staff and deferring purchases and equipment necessary to perform day to day operations. He said that the Council has been asking staff to do more with less.

Mayor/Chairman Kennedy indicated that the Council/Agency would be making a decision on the budget that is work in progress. He inquired as to the Council/Agency's thoughts on the Finance & Audit Committee comments? Does the Council/Agency want to proceed with a survey of the community to see what it is willing to support?

Council/Agency Member Sellers recommended that the discussion of a possible survey on what the local community will support for different levels of service be agendized for Council/Agency discussion.

Finance Director Dilles indicated that the following were steps taken to balance the budget:

- Vacancies remain unfilled
- Eliminated capital outlay costs
- Eliminated street maintenance transfers out
- Reduced training, travel and conference costs

- Increased transfers in from the Park Maintenance Account by \$100,000
- Did not include any across the board increases for employees
- Used \$370,000 of the General Fund reserves
- Used equipment replacement fund reserves

Mayor Pro Tempore/Vice-chair Chang expressed concern with the RDA funds.

Council/Agency Member Sellers said that the City needs to figure out a solution for RDA funds in August 2003 when the State decides what it will do with RDA funding. He did not believe that the City should react to the State budget cuts until they are known.

City Manager/Executive Director Tewes said that the Governor's original Vehicle License Fee (VLF) proposal would have resulted in the loss of \$1.5 million to the General Fund. However, the May revision was modified. The proposed VLF increase would make cities whole again. However, he is cautious because the Governor may not have the 2/3 vote required to increase the VLF.

Council/Agency Member Sellers recommended that the Council/Agency proceed with the budget process and revisit the budget when changes are proposed by the State. Further budget study sessions could be scheduled at that time.

Mayor/Chairman Kennedy recommended that staff prepare a "White Paper" that identifies what funds are immediately available.

Staff presented the Council/Agency with a Capital Improvements Program (CIP) budget power point presentation.

Mayor/Chairman Kennedy supported the use of reserves for the design of a regional soccer complex. He suggested that a SCRWA representative present a report on plans for a wastewater treatment plant expansion.

City Manager/Executive Director Tewes informed the Council/Agency that it scheduled another budget study session on June 11 and a public hearing on June 18.

Council/Agency Member Sellers inquired as to the cost for the new police station. It was indicated that the police station would cost \$5 million over a 25-year period. He inquired whether it would make sense to find revenues to pay off the facility at the front end.

City Manager/Executive Director Tewes indicated that a new general obligation bond would help the general fund pay for the police station upfront.

Council/Agency Member Sellers inquired whether it would make sense to finance the police station based on low interest rates. He recommended that funding sources be investigated.

Mayor/Chairman Kennedy felt that it may be helpful to have a sheet listing all costs for the police station and reviewing financing alternatives (e.g., loan versus using a portion of the General Fund reserves).

Mayor Pro Tempore/Vice-chair Chang stated that the City has been successful with projects based on a “pay as you go” philosophy. Now, there is some thought being given to borrowing to finance projects.

Council/Agency Member Sellers said that there are a lot of options available to pay for facilities. He felt that the City can turn around the police building asset in 20+ years. He stated that sometimes it may make sense to borrow and save money for other projects.

Mayor/Chairman Kennedy noted that interest rates are at a historical all time low. He indicated that the City has been frugal and proceeded in a “pay as you go” philosophy, preserving revenues. He felt that the City’s stability could be protected by borrowing funds.

Mayor Pro Tempore/Vice-chair Chang stated that should the City move forward with a new police facility and needs to borrow \$2.5 million, she recommended that the City use \$1 million from the reserves in order to reduce the loan repayment amount.

Mayor/Chairman Kennedy recommended that the Council/Agency come up with a criteria/option for financing the facility.

Council/Agency Member Sellers inquired whether there are other additional opportunities that could be realized at the Community & Cultural Center such as increasing staffing levels and/or marketing the facility?

Recreation and Community Services Manager Spier indicated that two components are being considered: 1) an art component, and 2) marketing to let out an RFP.

Council/Agency Member Carr stated that the CIP is based on certain assumptions. He did not know the best way to discuss the assumptions as he did not believe that the assumptions have been defined. He recommended that the assumptions be discussed, possibly in an RDA workshop. He was not sure as to the timing of the adoption of the CIP based on the assumptions.

There was discussion about the proposed expansion of the El Toro Youth Center. It was noted that funding was not identified for this expansion. It was indicated that the expansion could be facilitated by borrowing from future CDBG funds, reducing the funds available for other projects. However, CDBG funds are based on an assumption that the federal government would continue this funding source.

Council/Agency Member Carr did not believe that the Council/Agency studied how projects would be funded. The Council/Agency needs to know where funding resources are coming from and the impacts that they may have on other projects.

City Manager/Executive Director Tewes indicated that staff will be conducting the studies necessary to evaluate projects' funding sources next year.

Council/Agency Member Sellers recommended that projects be discussed as they come up. He felt that there is a multi-year issue.

Mayor/Chairman Kennedy inquired whether it would make more sense to spend more time studying the CIP budget.

Council/Agency Member Sellers noted that staff suggests that the Council/Agency return with its thoughts and comments at the next scheduled budget session.

Mayor/Chairman Kennedy recommended that each Council/Agency member identify CIP items for discussion at the next budget session.

Council/Agency Member Sellers felt that the City needs to plan for any federal and/or State budget changes, but not over react to them. He felt that the City has some latitude based on the RDA. He would support identification of further cuts, as necessary. He stated that he would minimize his use of the Council's conference and travel budget. He stated that he could not continue to support a 40% reserve and that he would not support the budget with a high reserve (40%). He felt that a 25% reserve was high but that it would help cushion the budget. He said that there was no quantitative data to support a 40% reserve.

Mayor Pro Tempore/Vice-chair Chang felt that the budget was independent of the reserves. She felt that the reserve policy needs discussion and refinement. She would support a one time use of the reserves.

Council/Agency Member Sellers felt that the City has opportunities for significant revenue increases (e.g., Transient Occupancy Tax,), noting that the City cannot continue to operate in the negative.

Mayor/Chairman Kennedy clarified that there is no proposal in the budget to change the 40% reserve policy.

Council/Agency Member Carr stated that he was not sure whether the Council/Agency could separate the budget and the reserve policy in order to proceed with a five year budget plan.

Mayor/Chairman Kennedy indicated that the Finance & Audit Committee did not take a position on changing the reserve policy.

Mayor Pro Tempore/Vice-chair Chang stated that she was not proposing changes to the budget. However, achieving a soft budget landing and increasing revenues was a subject for further discussion. She did not recommend changing the reserve policy with this budget.

Mayor/Chairman Kennedy felt that this was a well prepared budget. He noted that this was not the first time that the Council/Agency has reviewed the budget numbers. He indicated that the budget is not

dipping too much into the reserves. He recommended that the budget be approved, that there be discussion of the CIP and that the Council/Agency continue to work on the reserve policy. Items that will help the City get through these economic times are new sources of revenue and efficiencies in the City's operation. He stated that he would not oppose reducing the 40% reserves to 25% if used on a one time basis to enhance revenues and/or close gaps between expenditures and revenues.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:00 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

DEVELOPMENT AGREEMENT DA 03-03: Hale-Garcia

RECOMMENDED ACTION(S):

1. Open and continue to August 20 agenda

EXECUTIVE SUMMARY:

The applicant is requesting approval of a project development agreement for a twelve-lot subdivision to be constructed on a 22-acre site located on the north side of Basil Ct., on the east side of Dougherty Ave. within the Capriano Subdivision. The proposed 12 lot subdivision is considered phase V of the Capriano project.

The development agreement was scheduled to be heard by the Planning Commission on May 27. The 12 lot subdivision covered by the development agreement requires the award of allocations from the 2002 Measure P competition. The Commission continued the subdivision and development agreement applications to allow for the Measure P appeal process to be completed. It is anticipated that the Measure P appeal process should be concluded in late July. It is therefore recommended that the proposed development agreement application be continued to the August 20 Council agenda.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 17

Prepared By:

Senior Planner

Approved By:

**Community
Development Director**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

Agenda Item # 18

Prepared By:

Asst. to the City
Manager

Submitted By:

City Manager

2003 HAZARDOUS BRUSH PROGRAM

COMMENCEMENT REPORT AND PUBLIC HEARING

RECOMMENDED ACTIONS:

1. **Accept** 2003 Hazardous Brush Program Commencement Report
2. **Open/Close** Public Hearing

EXECUTIVE SUMMARY:

As part of the 2003 Hazardous Vegetation Management Program, Santa Clara County Fire Department staff have inspected properties in the Hazardous Hillside area. Property owners in these regions are obliged to meet special property maintenance guidelines to reduce the threat of fire. In particular, they must remove brush on their property that could provide fuel for a fire and increase the chances that fire on one property would spread to an adjoining property.

The Council adopted Resolution 5626 on December 4, 2002, declaring hazardous vegetation to be a nuisance and ordering its removal. The resolution also set the June 4, 2003 public hearing date for the brush abatement program. Brush abatement notices have been mailed to property owners in Morgan Hill whose properties have been identified as having, or potentially having, a problem with hazardous brush. In addition, notice of this public hearing has been published in the *Morgan Hill Times* per Government Code Section 39556.

The purpose of this public hearing is to hear from property owners who object to having their property in the brush abatement portion of the 2003 Hazardous Vegetation Management Program. The list of properties in the Brush Program, attached as Exhibit A, has been posted at City Hall for ten days prior to this public hearing as required.

The City controls the growth of hazardous vegetation under the authority set out in Chapter 8.20 of the Morgan Hill Municipal Code and in Government Code Sections 39560 and following. The City has a contract with the Santa Clara County Fire Marshal's Office which provides for County abatement of the property if the property owner does not maintain the property as required. If the work is completed by the Fire Marshal's Office contractor, costs for the work are added to the owner's property tax assessment.

The County's contractor will complete abatement work during the month of June. Staff will return to the Council on July 23, 2003 to present a list of property assessments. The assessments must be submitted to the County Assessor's Office prior to August 10, 2003. *Please note that, at this time, no Council meetings are scheduled between July 23 and August 10.* On July 23, the County Fire Marshal's Office will bring documentation of work done during the 2003 Hazardous Vegetation Program. Fire Marshal's Office staff will be prepared to answer questions that arise.

FISCAL IMPACT: The Hazardous Vegetation Management Program is user fee supported. The per-lot assessment includes the actual costs for controlling vegetation plus the overhead cost to manage the program.



CITY COUNCIL STAFF REPORT

MEETING DATE: *June 4, 2003*

ZONING AMENDMENT APPLICATION, ZAA-98-16: CONDIT – HORIZON LAND (THE FORD STORE)

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Approve Mitigated Negative Declaration
3. Waive the First and Second Reading of Ordinance
4. Introduce Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval to amend the Horizon Land Planned Unit Development (PUD), located at the northeast quadrant of E. Dunne Ave. and Highway 101. The amendment request includes the following:

1. Establishment of a precise development plan for the northern 8.65 acres of the Horizon Land PUD, to include the construction of a 30,027-sf Ford dealership and two commercial pads. The two commercial pads are not proposed for development at this time, but are proposed for a hotel (maximum 56 rooms) and sit-down restaurant.
2. Amendment to the Horizon Land PUD Guidelines (as contained in Ordinance No. 1444).
3. Exceptions to the city-wide PUD standards (as contained in Chapter 18.30 of the Municipal Code). For a detailed project analysis, please refer to Attachment A of this report.

The Planning Commission reviewed the zoning amendment request at the May 13 meeting. At the meeting, a number of concerned citizens (including an attorney representing Bob Lynch Ford of Gilroy) expressed concern regarding the project, specifically related to lighting, traffic, noise and hazardous materials. The attorney also questioned the requested exceptions to the city-wide PUD standards, and the findings required to approve the exceptions. Due to the number of concerns raised at the meeting, the Commission continued the item to May 27, and directed Staff to review and address the issues in the Resolution and mitigated Negative Declaration.

Staff revised the Resolution and mitigated Negative Declaration to address the above referenced concerns. At the May 27 meeting, the Commission reviewed the revisions and recommended approval of the zoning amendment request by a 5 to 0 vote, with modifications. The Commission's modifications include the following: 1) a City-issued photometric study will be required to ensure potential light/glare impacts on adjacent properties are minimized, 2) truck deliveries to the Ford dealership will be limited to 9 a.m. to 4 p.m. and loading/unloading of automobiles shall be conducted entirely on-site, 3) minimum 15-gallon shrubs will be required along the project frontages, and 4) use of any noise intrusive communication system (e.g., public address system) will be prohibited in the PUD. A copy of the May 13 Commission minutes and May 27 Commission staff report are attached for the Council's reference.

Staff supports the proposed zoning amendment request, and recommends approval of the mitigated Negative Declaration as attached. The mitigated Negative Declaration includes mitigation measures which would reduce potential impacts to a less than significant level. Should the Council choose to approve the zoning amendment application, an approval Ordinance incorporating the revised Horizon Land PUD Guidelines and exceptions to the city-wide PUD standards is attached.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

Agenda Item # 19

Prepared By:

Associate Planner

Approved By:

CDD Director

Submitted By:

City Manager



‘ATTACHMENT A’
MEMORANDUM

To: CITY COUNCIL

Date: June 4, 2003

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: Zoning Amendment Application, ZAA-98-16: Condit – Horizon Land (The Ford Store)

BACKGROUND:

In October 1999, the City Council adopted Ordinance No. 1444, establishing a PUD, preliminary development plan, and PUD Guidelines for the northeast quadrant of E. Dunne Ave. and Highway 101. The PUD, referred to as the Horizon Land PUD, includes the existing Holiday Inn Express, McDonald's, Jack in the Box, gas station, and 8.65 acres of undeveloped land. The preliminary plan anticipated development of the 8.65 acres with a health/club fitness center, sports facility/indoor commercial recreation use, quality retail center, 56-room hotel and a sit down restaurant. Although, the PUD Guidelines state all permitted uses of the HC, Highway Commercial zoning district are allowed uses in the Horizon Land PUD. The proposed car dealership is a permitted use in the HC zoning district, and is therefore a permitted use in the PUD. A copy of the approved Horizon Land PUD preliminary plan is attached for the Council's reference.

CASE ANALYSIS:

The applicant is requesting to establish a precise development plan for the Horizon Land PUD and to amend provisions of the Horizon Land PUD Guidelines. The applicant is also requesting approval for exceptions to the city-wide PUD standards, as discussed in detail below.

The precise development plan for the 8.65-acres of undeveloped PUD area includes a 30,027-sf Ford dealership on the northern 6.02 acres and two commercial pads on the remaining 2.63 acres. The two commercial pads are not proposed for development at this time, but are anticipated for future development of a hotel (maximum 56 rooms) and a sit-down restaurant. The Ford dealership will include new and used vehicle sales and service. Access to the site will be provided via two driveways off Condit Rd. It should be noted that Condit Rd. is currently being evaluated under the Murphy Corridor Study. As part of that study, alternative roadway alignments for Condit Rd. and Murphy Ave. are being considered. One possible scenario would be to realign Condit Rd. to connect with Murphy Ave. Although the ultimate roadway alignment for Condit Rd. is unknown at this time, the proposed project would not impact or conflict with any of the scenarios currently being evaluated under the Murphy Corridor Study.

As noted previously, the applicant is requesting amendments to the Horizon Land PUD Guidelines. A copy of the Horizon Land PUD Guidelines is attached with the proposed modifications. Text changes are noted by the following: 1) text in reduced font size represent language proposed to be removed, and 2) bold, italicized text represent language proposed to be

Attachment A – Council Staff Report
ZAA-98-16: Condit – Horizon Land (The Ford Store)

added. The proposed text changes are largely related to building design, with some amendments proposed to the landscaping, parking and display provisions of the Guidelines.

The applicant is also requesting approval for exceptions to the city-wide PUD standards. For the Council's reference, a list of the proposed exceptions is attached to this report, along with Staff's comments. Exceptions from the city-wide PUD standards may be approved by the Council if specific findings can be made. These findings are outlined in Section 18.30.110 (Exception to Development Standards) of the Morgan Hill Municipal Code (MHMC), and are provided below.

“An exception to the minimum development standards established in Section 18.30.090 may be approved by the City Council upon recommendation of the Planning Commission as part of the establishment of or amendment to a PUD. An exception may be approved only if the City Council makes the following affirmative findings:

- A. Approval of the exception is necessary for the preservation and enjoyment of substantial property rights of the applicant; and*
- B. The exception will only be approved to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant; and*
- C. The effect of the reduction or elimination of the development standard will be substantially mitigated by the provision of other design features or enhancements to the project; and*
- D. Approval of the exception will not be outweighed by the adverse effects to the public health safety and welfare of persons working or residing in the area.”*

On April 17, 2003, the Architectural Review Board (ARB) reviewed the preliminary site, landscape and architectural plans for the project. In general, the ARB found the site plan to be acceptable as proposed, however, had concerns regarding the building design. Since the ARB meeting, the applicant has revised the building elevations to address some of the Board's comments. The project will be required to obtain formal ARB approval after Council's approval of the zoning amendment application.

ENVIRONMENTAL ASSESSMENT

Two technical studies were completed for the project: a burrowing owl study and transportation impact analysis (TIA). The burrowing owl surveys identified no owls on-site and the site was found to be inconsistent with potential burrowing owl habitat. The TIA identified a significant impact to the unsignalized intersection of Murphy/Dunne Ave. from operation of the Ford dealership and buildout of the PUD. Signalization of the intersection would improve conditions to an acceptable level. However, a warrant study will be required to determine whether a traffic signal would be appropriate at this intersection. Both the Ford dealership and buildout of the PUD would have a less-than-significant impact at signalized intersections and on the freeway segments. In addition, site access, on-site circulation and parking are considered adequate for the proposed Ford dealership; although, a number of measures will be required to enhance traffic safety and circulation. Additional measures will also be required of the applicant to minimize impacts to water, air quality, biological resources, hazards, noise and aesthetics. With implementation of the mitigation measures, less than significant impacts are anticipated.

RECOMMENDATION

Staff recommends Council approval of the zoning amendment request, with conditions. Staff also recommends approval of the mitigated Negative Declaration as attached.

REQUESTED EXCEPTIONS TO CITY-WIDE PUD STANDARDS

No.	Source	Requirement	Staff Comment
1	§18.30.090.A.4	<i>“Rooflines shall vary in height and shall incorporate a maximum of two varying roof types (e.g., hip, gable). No visual flat rooflines shall be allowed.”</i>	The applicant is requesting an exception to this requirement to allow for parapet walls in the building design.
2	§18.30.090.A.18	<i>“Buildings shall be placed at the front setback line for at least 35 percent of the street frontage of the PUD, unless infeasible due to the size or configuration of the property.”</i>	An exception to this requirement would allow the applicant to locate the Ford building more central to the site, thereby reducing the amount of cars visible from the freeway. As shown on the plans, the future building on ‘Lot D’ will be constructed at the front setback per the PUD requirement.
3	§18.30.090.C.12	<i>“All landscape areas provided (with the exception of areas adjacent to public streets) shall have a minimum width of 10 feet. This includes but is not limited to landscaping adjacent to buildings, along side and rear property lines, and finger planters within parking lots.”</i>	The applicant has provided the 10-ft wide landscape areas where possible. However, the applicant requests exceptions to this requirement where necessary to improve on-site parking and circulation.
4	§18.30.090.E.2	<i>“In order to facilitate on-site traffic flow and vehicle and pedestrian safety, parking stalls shall not be located directly adjacent to the front of a major use occupying 10,000 sq. ft. or more floor area.”</i>	This standard was written with the intent to pertain to commercial retail development with high volumes of vehicle and pedestrian traffic. A car dealership would generate considerably lower volumes of vehicle and pedestrian traffic. Therefore, the applicant requests an exception to this standard.
5	§18.30.090.E.9	<i>“Drive aisles shall allow for complete circulation within the PUD, with sufficient width for emergency vehicles. Dead end drive aisles shall not be allowed.”</i>	One dead end drive aisle is proposed on-site. A continuous landscape planter was designed to span two rows of parking in order to provide screening of the service roll-up door. In addition, this area is designated service parking, in which Ford service employees would park the vehicles. Therefore, circulation impacts are not anticipated.
6	§18.30.090.F.2	<i>“No exterior retail displays shall be allowed.”</i>	Due to the nature of the proposed use (car dealership), an exception to this standard is required.

ORDINANCE NO. 1621, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE HORIZON LAND PUD AND ESTABLISHMENT OF A PRECISE DEVELOPMENT PLAN FOR THE NORTHERN 8.65 ACRES TO INCLUDE A 30,027-SF FORD DEALERSHIP AND TWO COMMERCIAL BUILDING PADS. (APN 728-17-019; ZAA-98-16: CONDIT – HORIZON LAND (THE FORD STORE))

WHEREAS, on October 6, 1999, the City Council adopted Ordinance No. 1444, establishing a planned unit development (PUD) and preliminary plan for the northeast quadrant of E. Dunne Avenue and Highway 101; and,

WHEREAS, the PUD, referred to hereafter as the “Horizon Land PUD,” includes the existing Holiday Inn Express, McDonald’s, Jack in the Box, gas station, and 8.65 acres of undeveloped land; and

WHEREAS, the applicant is requesting amendment of the PUD, and establishment of a precise development plan for the 8.65 acres of undeveloped land, which includes construction of a 30,027-square foot Ford dealership and two commercial building pads; and

WHEREAS, on May 13, 2003, the Planning Commission of the City of Morgan Hill held a duly-noticed public hearing on the Application; and

WHEREAS, on May 13, 2003, after the submission of testimony and exhibits, and due consideration thereof, the Planning Commission, by a unanimous vote, continued the Application to May 27, 2003, due to matters raised and documents presented at the hearing; and

WHEREAS, on May 27, 2003, the hearing on the Application continued at the regular meeting of the Planning Commission, at which time the Planning Commission, by a vote of 5 to 0 (with two members absent), recommended approval of application ZAA-98-16: Condit – Horizon Land (The Ford Store) to the City Council; and

WHEREAS, testimony and exhibits were submitted by Applicant, staff, and others, including the file in this matter, which testimony and exhibits are hereby incorporated into the record of this matter; and

WHEREAS, such testimony and exhibits have been considered by the Planning Commission; and

WHEREAS, on June 4, 2003, the City Council of the City of Morgan Hill held a duly-noticed public hearing on the Application; and

WHEREAS, at the public hearing on June 4, 2003, testimony and exhibits were submitted by Applicant, staff, and others, including the file in this matter, which testimony and exhibits are hereby incorporated into the record of this matter; and

WHEREAS, such testimony and exhibits have been considered by the City Council.

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAINS AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan because the precise development plan, with its automobile dealership designation, is an allowable use under those documents.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code, as set forth more specifically below and incorporated herein.
- SECTION 3.** An environmental initial study has been prepared for this application and is complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed. An Environmental Impact Report is not required for the proposed Application, as all potential impacts related to water, air quality, transportation/circulation, biological resources, hazards, noise, and aesthetics (lighting) have been addressed and minimized to a less than significant level with implementation of mitigation measures, as set forth in the mitigated Negative Declaration and incorporated herein.
- SECTION 4.** The underlying zoning district for the Horizon Land PUD is HC, Highway Commercial. Per Section 18.26.020 of the Morgan Hill Municipal Code (MHMC), the Highway Commercial district is intended to provide areas adjacent to the freeway that can accommodate highway and tourist oriented uses, and uses which require the high visibility of thoroughfare locations.
- SECTION 5.** Motor vehicle sales and service is listed as a permitted use in the Highway Commercial zoning district.
- SECTION 6.** The proposed site is one of the few locations within the City that could accommodate and would be appropriate for an automobile dealership. An automobile dealership use would be less impacted than other uses by issues associated with the freeway such as noise and exhaust, and would benefit commercially from the visibility and easier access from the freeway by potential purchasers.

SECTION 7. Strict adherence to the city-wide PUD standards would hinder the successful establishment of an automobile dealership within a PUD. The city-wide PUD standards prohibit exterior retail display and require screening of parking areas through landscaping and the placement of building(s), which are in conflict with the requirements of an automobile dealership to visibly display their wares to passers-by. These wares, due to their number and size, are best displayed in an unscreened, parking lot-type facility.

SECTION 8. Therefore, based upon the above reasons, and the record in this matter, the City Council hereby approves exceptions to the city-wide PUD development standards listed below for the proposed automobile dealership. The City Council hereby finds that:

- 1) Approval of the exceptions is necessary for the preservation and enjoyment of substantial property rights of the applicant;
- 2) The exceptions are approved only to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant;
- 3) The effect of the reduction or elimination of the development standards will be substantially mitigated by the provision of other design features or enhancements to the project as set forth in the record and this resolution; and
- 4) Approval of the exceptions will not be outweighed by any adverse effects to the public health, safety or welfare of persons working or residing in the area.

SECTION 9. (a) Section 18.30.090.A.4 of the MHMC prohibits visual flat rooflines in a PUD.

(b) However, precedent has been established for the approval of buildings designed with parapet walls in other PUDs in the City, specifically the Tharaldson PUD, Gateway PUD and Tennant Station (Safeway) PUD. Therefore, approval of an exception to Section 18.30.090.A.4 would not be a grant of special privilege, but would preserve the property rights of the applicant. Elimination of this development standard for the automobile dealership will be mitigated through the provision of site perimeter landscaping, building perimeter landscaping, and a reduced building profile (30-ft max. height and increased building setback from public roadways), as shown on the project plans.

(c) Therefore, the City Council approves, on a separate and distinct basis, the use of parapet walls in the design of the automobile dealership building.

SECTION 10. (a) Section 18.30.090.A.18 of the MHMC requires buildings to be placed at the front setback line for at least 35 percent of the street frontage of the PUD, unless infeasible due to the size or configuration of the property.

(b) The primary intent of Section 18.30.090.A.18 is to screen the view of parking from public roadways. Locating typical commercial retail

buildings at the front setback line with parking to the rear generally does not significantly impact business establishments, as parking is incidental to the commercial retail use. However, parking/display areas for an automobile dealership is the primary indicia of such use, and locating the building at the front setback line with parking to the rear would pose a significant hardship to the commercial viability of the business enterprise. Therefore, approval of an exception to this standard for the automobile dealership is necessary for the preservation and enjoyment of substantial property rights of the applicant.

- (c) An exception to Section 18.30.090.A.18 of the MHMC for the automobile dealership will be mitigated by the following: 1) a 30-ft wide landscape buffer will be provided along the project frontage, 2) the view of vehicles visible from the freeway will be minimized, and 3) an increased separation will be provided between the auto sales/service use and the residential-zoned property across Condit Road. Also, the future building on Lot D will be constructed at the front setback line in compliance with the development standard, as illustrated on the precise development plan.
- (d) The City Council therefore approves, on a separate and distinct basis, the location of the automobile dealership as shown on the site plan date stamped May 20, 2003.

- SECTION 11.**
- (a) Section 18.30.090.C.12 of the MHMC requires all landscaped areas provided (with the exception of areas adjacent to public streets) to have a minimum width of 10 feet.
 - (b) The intent of Section 18.30.090.C.12 is to provide enhanced landscaping in PUDs. However, precedent has been established for the approval of reduced landscaped areas in other PUDs in the City, specifically the Tharaldson PUD. Therefore, approval of an exception to Section 18.30.090.C.12 would not be a grant of special privilege, but would preserve the property rights of the applicant.
 - (c) The City Council recommends that the applicant provide minimum 10-ft wide landscaped areas where possible, but hereby approves, on a separate and distinct basis, landscaped areas less than 10-ft in width to improve on-site parking and circulation.

- SECTION 12.**
- (a) Section 18.30.090.E.2 of the MHMC prohibits parking stalls to be located directly adjacent to the front of a major use occupying 10,000 sf or more floor area.
 - (b) The intent of Section 18.30.090.E.2 is to facilitate on-site traffic flow and vehicle and pedestrian safety, particularly for typical commercial-retail developments which generate high volumes of vehicle and pedestrian traffic. An automobile dealership generates considerably lower volumes of vehicle and pedestrian traffic than typical commercial retail uses; therefore, potential circulation hazards are not anticipated. Also, precedent has been established for the approval of parking in front of uses occupying

10,000 sf or more floor area in other PUDs in the City, specifically the Condit Road (Harley Davidson) PUD. Therefore, approval of an exception to Section 18.30.090.E.2 would not be a grant of special privilege, but would preserve the property rights of the applicant.

- (c) The City Council therefore approves, on a separate and distinct basis, parking directly adjacent to the front of the automobile dealership building.

- SECTION 13.**
- (a) Section 18.30.090.E.9 of the MHMC prohibits dead end drive aisles.
 - (b) An exception to Section 18.30.090.E.9 is requested only to the extent necessary for the preservation and enjoyment of the substantial property rights of the applicant. One dead end drive aisle is proposed on-site to allow screening of a service roll-up door. The dead end drive aisle is located in a service parking area where Ford employees would park the vehicles, and therefore, would not result in circulation impacts. Elimination of the development standard contained in Section 18.30.090.E.9 will be mitigated by the provision of enhanced landscaping to screen the service roll-up door.
 - (c) The City Council therefore approves, on a separate and distinct basis, the single dead end drive aisle on the automobile dealership site.

- SECTION 14.**
- (a) Section 18.30.090.F.2 of the MHMC prohibits exterior retail displays in a PUD.
 - (b) The intent of Section 18.30.090.F.2 is to prevent the display/sale of merchandise typically displayed/sold indoors to be placed outdoors where they obstruct pedestrian walkways and are visually distracting and unsightly. Motor vehicle sales and service is a permitted use in the Horizon Land PUD. Motor vehicle sales uses require exterior retail display because of the size and volume of wares. Strict adherence to this standard would preclude the development of an automobile dealership on-site, and deny the property owner the preservation and enjoyment of his substantial property rights.
 - (c) The City Council therefore approves, on a separate and distinct basis, exterior retail display of automobiles on the automobile dealership site.

- SECTION 15.** The exceptions to the city-wide PUD standards identified in this Resolution shall apply only to the proposed automobile dealership. Development of the hotel and restaurant sites shall be subject to compliance with the city-wide PUD standards, as provided in Section 18.30.090 of the Morgan Hill Municipal Code, unless approved otherwise by the City Council under a separate zoning amendment request.

- SECTION 16.** Based on the foregoing, the City Council hereby approves a precise development plan to include a 30,027-sf automobile dealership on the northern 6.02 acres, a hotel (maximum 56 rooms) on Lot E, and a sit down restaurant on

Lot D, as shown on the plans as contained in that certain series of documents date stamped May 20, 2003 on file in the Community Development Department, entitled "The Ford Store at Morgan Hill" prepared by Fred Goree A.I.A., Architects. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and setbacks of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project. Development of the hotel and restaurant sites shall be subject to compliance with the Horizon Land PUD Guidelines, the city-wide PUD standards, and the Morgan Hill Planning and Zoning Codes.

SECTION 17. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 18. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 19. The approved project shall be subject to the following conditions:

- A. The applicant shall comply with the mitigation measures of the mitigated Negative Declaration.
- B. The project shall be subject to compliance with the Horizon Land PUD guidelines as amended by Exhibit A of this Ordinance. The project shall also be subject to compliance with the city-wide PUD standards as contained in Chapter 18.30 of the Morgan Hill Municipal Code, with the exception of any deviations approved by the City Council.
- C. The signs identified on the project plans are not approved as part of the zoning amendment application. In accordance with the Horizon Land PUD Guidelines, a uniform sign program shall be established for the overall PUD and submitted for review and approval by the Architectural Review Board (ARB).
- D. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of applicant's project. In addition, developer shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of

City's approval or approvals, but shall not be required to pay any litigation from the City. However, developer shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted.

- E. The display of vehicles shall be prohibited in any landscaped area identified on the plans date stamped May 20, 2003.
- F. As part of the site and architectural review process, a City-issued photometric study shall be conducted to evaluate on-site lighting on the automobile dealership site. The photometric study shall identify appropriate lighting levels to minimize light and glare impacts on adjacent properties. At a minimum, lighting levels shall be less intensive than the lighting levels at the existing Chevrolet dealership located at the northwest quadrant of E. Dunne Avenue and Highway 101. The project applicant shall be responsible for the cost of the study, as well as implementation of required mitigation measures. The photometric study shall be reviewed and approved by the Architectural Review Board.
- G. Test driving of vehicles for the automobile dealership use shall be limited to Condit Road and Highway 101, and the small segments of E. Dunne Avenue, Cochrane Road and/or Tennant Avenue required for access to/from the freeway. Test driving of vehicles shall be prohibited along Murphy Avenue. Should Condit Road be realigned to connect with Murphy Avenue as a result of the Murphy Corridor Study, vehicle test driving shall be limited to Condit Road south of the automobile dealership site, the segment of Highway 101 between E. Dunne Avenue and Tennant Avenue, and the small segments of E. Dunne Avenue and Tennant Avenue required for freeway access.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 4th Day of June 2003, and was finally adopted at a regular meeting of said Council on the 18th Day of June 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1621, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th Day of June, 2003.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

REVISED 5/28/03

‘EXHIBIT A’

P U D G U I D E L I N E S

Allowed Uses

1. Uses allowed within the PUD shall include all permitted uses of the Highway Commercial zoning district, as specified in the City of Morgan Hill Planning and Zoning Codes, Chapter 18.26, as well as conditionally permitted uses of the Highway Commercial zoning district, subject to issuance of a conditional use permit. Exceptions to permitted and conditionally permitted uses within the PUD include the following:
 - A. A maximum of two hotels shall be permitted within the PUD, including the existing Holiday Express, not to exceed 84 room occupancy and one additional new hotel, not to exceed 56 room occupancy;
 - B. No restaurants with drive-up windows/menu boards, including “quick stop” restaurants, shall be permitted within the PUD, other than the existing Jack-in-the-Box and McDonald’s restaurants; and
 - C. No gas stations other than the existing “Gas and Food” facility shall be permitted within the PUD.

Appurtenant Uses/Devices

2. Uses within the PUD that utilize shopping carts shall provide indoor storage of the carts and shall provide for collection areas throughout the parking lots.
3. Vending machines, rides, newspaper racks or any coin operated devices shall not be placed on the exterior of the retail buildings.

Architecture/Site Planning

4. The general aesthetic character of the building exteriors shall be a Mediterranean style *of a harmonious* architectural theme. Some characteristics of this theme are as follows:
 - a. Use of structural, architectural design elements, i.e. corridors, arches, *modified arches*, columns, trellises, wrought iron details and extended eaves.
 - b. Strong textured look, using rough troweled stucco finish, batten exterior, stone, color etc.
 - c. Strong feeling of overhead treatment such as extended or detailed rafters, roof overhangs and covered walkways.
 - b. Earthen colors. Colors range from grays, yellows, bone, browns *and* rust.
 - c. Wall relief (graphics, three dimensional design, etc.)
 - d. Strong window statement (treatment of frame, wood mullions and border.)
 - e. Roof materials *on gabled or hipped roofs* shall be colored roof tiles, satin finish (non-glossy), barrel type.
 - f. Materials, textures, color and details shall be appropriate expressions of its design concept and function.

5. The existing “Holiday Inn Express” or a replacement motel building on that same site shall be limited to no more than three stories and 35 feet in height. All other buildings within the PUD shall not exceed two stories and shall contain a full roof element.
6. Rooflines, except for the existing Holiday Inn Express, shall vary in height, not to exceed 30 ft., and shall incorporate a maximum of two varying roof types (e.g., hip, gable) **or a minimum of two varying roof heights will be provided on flat roofed structures.** No visual flat rooflines shall be allowed.
7. Structures shall incorporate breaks in horizontal planes by stepping or staggering setbacks and recessing windows and entrances, to provide substance and scale.
8. Doors and windows shall be enhanced by use of various sizes and shapes, and highlighted by the use of accent trim **or accent colored window framing.** (e.g. molding, pop-out or wood trim). The design shall be complementary to the Mediterranean style architecture of the project.
9. The number of materials on the exterior elevation shall be limited to prevent visual overload.
10. All exterior wall elevations visible from and/or facing public roadways shall have architectural treatment. No building surface fronting on a public roadway shall have a flat, void surface without architectural treatment.
11. Facade architectural treatment shall be applied to all building elevations with the same degree of detail as the building entrance.
12. No franchise architecture shall be permitted. Building designs shall incorporate **harmonious** the architectural elements identified in Item No. 4, above, in order to achieve the desired design objectives of the PUD and to create building products that are unique to the City of Morgan Hill.
13. The design criteria for the development shall be included within the CC&R’s.
14. Buildings at the front setback shall provide public access.
15. The design shall be compatible with the immediate environment and provide harmonious transition between various commercial uses.
16. No mechanical equipment shall be exposed on the wall surface of a building.
17. Mechanical and utility equipment shall be located below the roofline or parapet wall and out of public view. Location within the building or at ground level is preferred to roof mounting. When such equipment cannot be so located, all roof-mounted mechanical equipment or ductwork which project vertically above the roof or roof parapet shall be screened by an enclosure which is detailed consistently with the building design.

18. Gutters and downspouts shall be designed elements of the project. Gutters and downspouts that are designed with parapet walls shall be located interior to the wall when adjacent to a roadway frontage. All other gutters and downspouts that cannot be located interior to the wall shall be treated to blend into the facade to which it is attached, unless used as a major design element, in which case the color shall be consistent with the color schemes of the building.
19. All outdoor storage of goods, materials or equipment shall be visually screened up to 8 ft. in vertical height. The screening shall be designed as an integral part of the building design and site layout. Chain link fencing with wood inserts is not an acceptable manner of screening.
20. Trash enclosures shall be constructed of solid masonry material, consistent with the buildings on-site, and shall be a minimum 6 ft. in height, with solid view obstructing gates. Trash enclosures shall be located in inconspicuous locations.
21. Fences and walls shall be designed to be compatible with the surrounding landscape and Mediterranean architectural concept.
22. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.
23. All buildings shall be protected by an approved automatic fire sprinkler system, per City of Morgan Hill Ordinance.
24. Buildings shall be placed at the front setback line for at least 35 percent of the street frontage of the PUD.
24. The amount and arrangement of open space and landscaping shall be appropriate to the design and function of the structure.
25. Landscaping shall be compatible with and complement the site planning as well as the design of the building.
26. A representative site plan for the entire PUD which illustrates building envelopes, parking areas, pedestrian access, landscaping, reciprocal easements, sign location, storm water detention and other features shall be included in the development standards. Drawings of building elevations, which embody the style and design concepts for the PUD and represent the level of architectural quality to be achieved, shall be included.
27. Provisions for connecting driveways and walkways with adjacent property owners are to be provided for in each design.
28. Parking lots are to be designed to include curb planters around existing trees where possible.
29. Compressors shall be screened by a wall or fence and be located below the fascia and/or roofline of the building. Further, they shall be located on the rear or hidden side of the

building and shall be painted to match the surface to which attached, if that surface is visible.

30. Any future changes in color palette for any building within the Horizon Land PUD shall be reviewed and approved by the Architectural Review Board.

31. All plans shall be subject to site approval by the City of Morgan Hill.

Easements

32. Easements for the installation and maintenance of utilities, walkways, future roads and drainage facilities, and shared driveways shall be recorded as part of any subdivision map or lot line adjustment. Other easements, such as paved parking shall be recorded as an offer of easement if secondary users are unknown.

Grading

33. The practice of balanced grading shall be implemented to the greatest extent possible.

Landscaping

Design criteria for landscaping shall be consistent throughout the PUD. Each development within the PUD shall follow the requirements contained herein when preparing their landscaping plans. Additional landscaping design criteria is available from the City of Morgan Hill, Planning Division.

34. The general characteristics of the plant palette for the PUD shall be a combination of year round color and textural interest. Plants shall be selected on the basis of color combinations, growth patterns, low maintenance and water conservation characteristics. At time of installation, the tree sizes shall be a minimum of 15 gallon and 24 inch box material.

35. At time of installation, all shrub planting shall be a minimum of 5-gallon size, unless otherwise approved by the Community Development Department. ***Minimum 15-gallon containers shall be installed along the project frontage(s), unless otherwise required by the Architectural Review Board.***

36. All street trees and trees planted within the front setback areas shall be a minimum of 24-inch box size.

37. The street trees shall be consistent with the City Morgan Hill Master Street Tree program.

38. A minimum 30-foot wide landscape area (excluding any landscaping in the right of way) shall be provided adjacent to all public streets within the PUD.

39. Landscaping shall be placed adjacent to a minimum of 50 percent of a building's perimeter.

40. Landscaping at the entrance of a building shall include box size and/or accent trees to create a focal point to help direct people to the building entrance.
41. Native oaks and fieldstones shall be incorporated into the landscape plan.
42. A minimum of 15 percent of all ***required*** parking areas shall be landscaped. Required setback and perimeter planting areas shall not be counted in this area, but may include the building perimeter landscaping.
43. A canopy like tree shall be planted in the parking lot planter islands to produce shade.
44. The entrance to the PUD shall be well landscaped and serve as a focal point.
45. Landscaping shall be compatible with, and complement the site planning, as well as the architecture of the building. Plantings in parking lots shall help soften and visually tie the buildings to landscaping.
46. Shrubs and vine planting shall be provided to screen utilities and trash enclosures.
47. The developer shall be required to follow the landscape design criteria, which is available from the City of Morgan Hill, Community Development Department. A landscape buffer shall be established, as required, to provide screening and noise abatement from the highway.
47. All landscape areas provided (with the exception of areas adjacent to public streets) shall have a minimum width of 10 feet. This includes but is not limited to landscaping adjacent to buildings, along side and rear property lines, and finger planters within parking lots.
48. All parking areas shall be screened from view of public streets by use of berming or masonry walls of a minimum three-foot effective height.
49. ***Proper trimming and pruning of trees within the Horizon Land PUD will be monitored by the City of Morgan Hill. The improper "Topping" of trees will be prohibited.***
50. ***Any future alterations or modifications of the landscaping within the Horizon Land PUD shall be reviewed and approved by the Architectural Review Board.***

Lighting

51. The design of the exterior building lighting and parking lot lighting fixtures shall be compatible with the architecture to be used in the development.

51. Parking lot lighting shall be consistent throughout the PUD. The maximum height of the lighting shall be 16 ft.
52. Lighting for pedestrian pathways shall be reduced in height and scale, to create a more human-scale feeling and atmosphere.
53. All lighting shall be shielded and directed in such a manner so as not to produce harmful effects upon neighboring property.

54. The lighting for all of the uses within the PUD shall be subject to review and approval of the Community Development Director. Adjustments to the lighting intensity may be requested after commencement of the use.

Parking and Loading/Circulation

55. Parking shall be screened from public view through the use of berming, hedgerow planting, shrubs, trees, fences or walls, or any combination thereof, provided that no more than 35% of the total screening shall consist of fences or walls. At time of installation, shrub plantings shall be minimum 5-gallon size, trees shall be a minimum 15-gallon, and berming/fences/walls shall be a minimum 3 ft. in height.
56. Parking stalls shall not be located along the front of a major retail building (10,000 sq. ft. or greater).
57. No angled parking or one-way drive aisles shall be utilized in the parking lot.
57. A maximum of one-third of total parking for the Planned Unit Development (PUD) shall be allowed to front Condit Road, or be located in front of the main development frontage ***with the exception of auto sales related retail.***
58. Parking for the restaurant parcel shall be restricted to the rear or side of the building, and shall not front Condit Road.
59. Parking areas shall be designed to include provision for pedestrian walkways to provide access to building entrances. Walkways that cross traffic lanes shall have special design features such as raised and/or textured pavement, narrowed roadway, or combination thereof. Walkways shall be provided through landscaped areas to protect landscaping from foot traffic damage.
60. Parking areas of adjoining property owners shall be located to utilize shared or reciprocal access and shared parking whenever possible.
61. Loading areas and docks shall be screened from view by a solid wall. The wall shall be architecturally treated and screened with landscaping. Loading areas shall not be located adjacent to or visible from Condit Road or Dunne Avenue.
62. ***Truck deliveries to the Ford dealership shall be restricted to the hours of 9 a.m. to 4 p.m., Monday through Saturday, to minimize traffic/circulation conflicts, and loading/unloading of automobiles shall be conducted entirely on-site.*** Truck deliveries ***to all other uses in the PUD*** shall be limited to 7 a.m. to 7 p.m., Monday through Saturday.
63. Parking lots shall be designed to provide for safe and efficient movement of vehicles between properties by providing joint access easements and reciprocal easements wherever possible.
64. Cross access easements and drive aisles shall be provided throughout the PUD.

65. Drive aisles shall allow for complete circulation within the PUD, with sufficient width for emergency vehicles, and shall not include dead end drive aisles.
66. PUD driveways shall align with those across the street.
67. Drive aisles shall align and be situated perpendicular to the main building frontage.
68. Adequate auto stack-up areas shall be designed to permit a minimum of two cars to enter the parking lot area without obstructing either street through traffic or vehicle backup areas within the parking lot.
69. The number of curb cuts connecting the site with collector or arterial streets shall be minimized.
70. Mutual access easements and mutual driveways shall be used to minimize paved areas and curb cuts.
71. A minimum of a 5 ft. wide walkways or landscaping shall be provided around architectural features to provide a visual of pedestrians crossing into the drive aisle from the storefronts.
72. Access to the property and circulation thereon shall be safe and convenient for pedestrians, cyclists, and vehicles. Vertical and horizontal sight lines shall be sufficient to ensure safe vehicular and pedestrian movements.

Signage/Displays

73. A uniform sign program identifying locations of signs both on- and off-site shall be prepared for review and approval of the Community Development Department, as part of the Architectural and Site Review Process.
74. PUDs which are, due to their location, eligible for freeway signage shall utilize a single freeway sign consistent with the provisions of the City sign ordinance.
75. Monument freestanding signs shall be allowed for those uses located adjacent to the Condit Road frontage, in compliance with the City of Morgan Hill Planning and Zoning Codes, Section 18.76.250.
76. Signs shall be approved by the City of Morgan Hill at the time of site review. Signs shall have design elements and colors consistent with the Mediterranean architecture theme of the PUD. Individually mounted channel letters shall be utilized for building attached signs.
77. Address numbers shall contrast with their background, and shall be six inches in height. Address numbers shall also occur on the monument sign.
78. ***With the exception of automobile display***, no exterior retail displays shall be allowed.

Utilities

79. There shall be shared use storm water detention facilities. Location and method of storm water mitigation shall be reviewed and approved as part of the Architectural and Site Review process.
80. A maximum of one detention pond, or one interlinked detention pond system with one outfall into the Madrone Channel, shall be used to serve the entire development. The detention pond shall not be located within any setback area and shall not be visible from any public street.
81. All backflow devices, fire risers and check valves shall be screened with landscaping.
82. All future development applications shall be subject to review and condition of the appropriate utility and public service providers for the City of Morgan Hill.
83. No utility equipment shall be located within the front setback area unless placed within an underground vault. All transformers shall be located interior to the site, outside of the front setback area, and shall be screened with landscape material.

Noise

84. *Uses within the PUD shall not use any exterior public address systems or other noise intrusive communication systems.*

General Provisions

85. Any modification to these PUD Guidelines shall be subject to review and approval of a PUD Guidelines Amendment.



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

REQUEST TO ADOPT THE CIVIC CENTER PARK BY THE LEADERSHIP MORGAN HILL 2003 CLASS

RECOMMENDED ACTION(S):

- 1) Receive report from the Leadership Morgan Hill 2003 Class
- 2) Approve the Request from Leadership Morgan Hill 2003 Class to Adopt the Civic Center Park as the "Leadership Park" project

EXECUTIVE SUMMARY:

The City of Morgan Hill has and continues to be supportive of the Leadership Morgan Hill Program. Several City employees have participated and graduated from this Program. One of the challenges that each Leadership Morgan Hill Class faces is a class project.

The Leadership Morgan Hill Class 2003 (Leadership 2003) has given consideration to various projects that it believes would provide a benefit to the community. Leadership 2003 has chosen to adopt the civic center park, invest in some improvements, and is requesting that the City Council authorize the class to proceed with the "Leadership Park" project.

Leadership 2003 is working toward refining the cost estimate to design and install improvements to the "Leadership Park" project. A fundraising concept has been agreed to by Leadership 2003 to help pay for the park improvements. It is anticipated that the "Buck an Inch" fundraising effort will raise approximately \$6,300. The Class will also seek in kind donations to help offset some of the improvement costs. Leadership 2003 believes that this is a worthwhile project to undertake. Once the "Leadership Park" project is completed, City employees, elected officials, community members and visitors to the Civic Center will have the opportunity to relax and enjoy the improved and enhanced park setting.

As part of this project, Class 2003 would like to invite community youth members to be part of the planning and project completion process.

Leadership 2003 is requesting the opportunity to address the City Council to explain the scope of work associated with improvements to the "Leadership Park" class project. Representatives from the Leadership 2003 class will be in attendance at the Council meeting to make a presentation and to present preliminary drawings that will depict the scope of work for the "Leadership Park" project.

FISCAL IMPACT: No fiscal impacts associated with the request to present the Leadership 2003 class project.

Agenda Item # 20

Prepared By:

**Council Services &
Records Manager/
City Clerk**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *June 4, 2003*

AWARD PHASE 1 OF CONSTRUCTION CONTRACT FOR POOL PACKAGE – MORGAN HILL AQUATICS COMPLEX

RECOMMENDED ACTION(S):

1. Approve project plans & specifications
2. Award the contract to California Commercial Pools in the amount of \$58,000 for Phase 1-Pool shop drawing submittals only

EXECUTIVE SUMMARY:

This past April, City Council authorized staff to advertise for public bids on the Aquatics Complex project. The contractor bids have been broken into two packages because of the accelerated project schedule as discussed at the Council meeting of April 16th, 2003.

The bid period for the pool package began on May 6, 2003, and four bids were received on May 27th as shown in the attached memorandum and matrix. The low bid is approximately 22.5% above the original project budget at schematic design, and 4.8% above our most recent cost estimate at 50% construction documents. This is as staff originally anticipated and mentioned at the April meeting. The general contractor bid period is scheduled to begin early June with bids due on July 1st. At that time, we will know the true complete costs of the project. The documents are being prepared with value engineering bid alternates to allow for cost reductions if needed. This will afford the City the flexibility to pick and choose items in order to balance the project budget. Staff is currently analyzing the options and will have a preliminary list to present at the meeting.

This first phase of work for the pool contractor (submittals) is scheduled to begin later this month and will allow for extra time to prepare shop drawings as discussed at the April City Council meeting. If the overall project costs are within budget, staff would then recommend award of Phase 2 work to California Commercial Pools in the amount of \$2,300,000, including appropriate alternatives, for the actual pool construction at the same time we award the general contract to that low bidder. The aquatics sub-committee will review the overall contract bids and make recommendation to Council. Once the general construction contract has been awarded, we will assign the pool contractor's contract to the selected general contractor. Staff recommends proceeding with the Phase 1 work for the Aquatics Complex by awarding a \$58,000 shop drawing contract to California Commercial Pools in order to remain on schedule for a May 2004 Grand Opening.

FISCAL IMPACT: The current total project construction budget of \$8,500,000 is funded in the 2002-2003 Capital Improvement Program (CIP) Budget, Project Number 115000-Aquatics Complex. No additional funding is required.

Agenda Item #21

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: June 4, 2003

Agenda Item # 22

Prepared By:

**Assistant to the City
Manager**

Submitted By:

City Manager

BURROWING OWL HABITAT MITIGATION PLAN

RECOMMENDED ACTION(S):

Approve the Plan

EXECUTIVE SUMMARY: Small numbers of burrowing owls were reported to live in the City of Morgan Hill prior to much of the City's current development. Due to anticipated losses in owl habitat, the City agreed to adopt a citywide burrowing owl mitigation plan in the environmental impact report for the redevelopment agency plan amendment. Earlier this year, the Audubon Society sued the City in an effort to expedite the plan adoption process. The settlement agreement for the lawsuit requires the City to consider adopting the plan.

A Task Force was appointed to guide plan development and a consultant, Albion Environmental, was retained. The Task Force includes representatives of the Planning Commission, the development community, the Audubon Society, and the California Department of Fish and Game. The Task Force has provided excellent input into the design of the proposed mitigation strategies.

Currently, project developers required to mitigate for a loss of owl habitat have been required to purchase habitat in the Central Valley. This approach is expensive for those impacted and does little to directly support the owls displaced from Morgan Hill development. The proposed citywide plan focuses on establishing a number of owl habitat preserve areas in which owls will hopefully flourish. In order to encourage the preservation and management of the most productive lands, a point system was developed that enables the City to score higher points per acre for preserve lands of higher habitat value. The consultant's initial analysis indicates that there is an ample supply of publicly-owned lands in the general Morgan Hill environment that can be properly managed as owl habitat.

This plan recognizes that all development on the valley floor, regardless of the absence or presence of burrows, results in the loss of foraging habitat for the owls. Therefore, a mitigation fee is proposed on all approved development – not just on development that results in the conversion of lands with burrows. By appropriately spreading out the impact onto all development, the mitigation fee becomes acceptably low for each new housing unit and nonresidentially developed acre. The current fee calculation anticipates a fee of \$149 per unit and \$1,045 per acre of nonresidential development. Fee revenues will be used exclusively to implement the plan.

The proposed plan, like most City plans, requires a number of future implementation activities. Chief among these are: 1) Adopting an implementation fee on new development; 2) Adopting a no discing ordinance; and 3) Establishing a contract with an entity to administer the preserve lands. Staff anticipates bringing all of these implementation activities to the Council within the next three months.

FISCAL IMPACT: Adequate funding is proposed in the 2003/2004 budget to implement the plan. Mitigation fee revenues are calculated to be adequate to secure, maintain, and administer preserve lands in the future.